

1 **LEWIS BRISBOIS BISGAARD & SMITH LLP**

ALEX A. GRAFT, SB# 239647

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5 Attorneys for Defendant

ROBERT N. WEAVER, ESQ.

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

11 CARL A. WESCOTT,

12 Plaintiff,

13 vs.

14 FREDERICK C. FIECHTER, IV;

DAVID M. ZEPP, ESQ.;

15 ROBERT N. WEAVER, ESQ. + DOES 1  
through 25,

16 Defendants.

Case No. CV22-4288-AGT

**DECLARATION OF ALEX A. GRAFT IN  
SUPPORT OF SPECIAL MOTION TO  
STRIKE (ANTI-SLAPP) PLAINTIFF'S  
COMPLAINT PURSUANT TO CAL.  
CODE OF CIVIL PROCEDURE § 425.16**

Date: December 16, 2022

Time: 10:00 a.m.

Courtroom: A - 15th Floor

Magistrate Judge Alex G. Tse

18 **DECLARATION OF ALEX A. GRAFT**

19 I, Alex A. Graft, declare as follows:

20 1. I am an attorney duly admitted to practice in all of the courts of the State of  
21 California and I am a partner with Lewis Brisbois Bisgaard & Smith LLP, attorneys of record for  
22 Defendant ROBERT N. WEAVER, ESQ. ("Attorney Weaver") herein. The facts set forth herein  
23 are of my own personal knowledge, and if sworn I could and would competently testify thereto.

24 2. Attached hereto as **Exhibit A**, for which I request judicial notice in support of the  
25 special motion to strike under Code of Civil Procedure section 425.16, is a true and correct copy  
26 of the Third Amended Complaint, filed November 1, 2011, in San Francisco Superior Court, Case  
27 No. CGC-10-496091 ("San Francisco Action").

28 3. Attached hereto as **Exhibit B**, for which I request judicial notice in support of the

1 special motion to strike under Code of Civil Procedure section 425.16, is a true and correct copy  
2 of the order dismissing Plaintiff's initial bankruptcy petition.

3 4. Attached hereto as **Exhibit C**, for which I request judicial notice in support of the  
4 special motion to strike under Code of Civil Procedure section 425.16, is a true and correct copy  
5 of the Adversary Complaint filed by Attorney Weaver in United States Bankruptcy Court,  
6 Northern District of California, Case No. 12-30143 DM ("Underlying Bankruptcy Action II").

7 5. Attached hereto as **Exhibit D**, for which I request judicial notice in support of the  
8 special motion to strike under Code of Civil Procedure section 425.16, is a true and correct copy  
9 of the Adversary Complaint filed by the bankruptcy trustee in the Underlying Bankruptcy Action  
10 II.

11 6. Attached hereto as **Exhibit E**, for which I request judicial notice in support of the  
12 special motion to strike under Code of Civil Procedure section 425.16, is a true and correct copy  
13 of the order granting summary judgment to the bankruptcy trustee in the Underlying Bankruptcy  
14 Action II.

15 7. Attached hereto as **Exhibit F**, for which I request judicial notice in support of the  
16 special motion to strike under Code of Civil Procedure section 425.16, is a true and correct copy  
17 of the judgment denying discharged entered in Underlying Bankruptcy Action II.

18 8. Attached hereto as **Exhibit G**, for which I request judicial notice in support of the  
19 special motion to strike under Code of Civil Procedure section 425.16, is a true and correct copy  
20 of the order authorizing withdrawal of counsel for Plaintiff in the San Francisco Action.

21 9. Attached hereto as **Exhibit H**, for which I request judicial notice in support of the  
22 special motion to strike under Code of Civil Procedure section 425.16, is a true and correct copy  
23 of the order continuing case management conference in the San Francisco Action.

24 10. Attached hereto as **Exhibit I**, for which I request judicial notice in support of the  
25 special motion to strike under Code of Civil Procedure section 425.16, is a true and correct copy  
26 excerpt of the register of actions in the San Francisco Action.

27 11. Attached hereto as **Exhibit J**, for which I request judicial notice in support of the  
28 special motion to strike under Code of Civil Procedure section 425.16, is a true and correct copy

1 of the request for default filed in the San Francisco Action.

2 12. Attached hereto as **Exhibit K**, for which I request judicial notice in support of the  
3 special motion to strike under Code of Civil Procedure section 425.16, is a true and correct copy  
4 of the notice of entry of default judgment in the San Francisco Action.

5 13. Attached hereto as **Exhibit L**, for which I request judicial notice in support of the  
6 special motion to strike under Code of Civil Procedure section 425.16, is a true and correct copy  
7 of both the request to set aside the judgment entered in the San Francisco Action and supplemental  
8 briefing filed by Plaintiff.

9 14. Attached hereto as **Exhibit M**, for which I request judicial notice in support of the  
10 special motion to strike under Code of Civil Procedure section 425.16, is a true and correct copy  
11 of the order denying Plaintiff's request to set aside the default judgment entered in the San  
12 Francisco Action.

13 15. Attached hereto as **Exhibit N**, for which I request judicial notice in support of the  
14 special motion to strike under Code of Civil Procedure section 425.16, is a true and correct copy  
15 of the judgment vacating discharge order in United States Bankruptcy Court, Northern District of  
16 California, Case No. 16-10975 HLB7 ("Underlying Bankruptcy Action III").

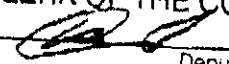
17 I declare under penalty of perjury under the laws of the United States of America that the  
18 foregoing is true and correct and that this declaration was executed on this 16th day of November,  
19 2022, at Danville, California.

20 

21 \_\_\_\_\_  
22 Alex A. Graft  
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# **Exhibit A**

PLD-C-001

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Dan G. Berris 269479 GUY KORNBLOM & ASSOCIATES 1388 Sutter Street, Suite 820 San Francisco, CA 94109 TELEPHONE NO.: (415) 440-7800 FAX NO. (Optional): (415) 440-7898 E-MAIL ADDRESS (Optional): dberris@kornblumlaw.com	FOR COURT USE ONLY  <h1 style="text-align: center;">FILED</h1> <p style="text-align: center;">San Francisco County Superior Court</p> <p style="text-align: center;">NOV 01 2011</p> <p style="text-align: center;">CLERK OF THE COURT</p> <p>BY:  Deputy Clerk</p>
ATTORNEY FOR (Name): Frederick C. Fiechter, Plaintiff <b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO</b> STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: CITY AND ZIP CODE: San Francisco 94102 BRANCH NAME: Civil Superior	
PLAINTIFF: Frederick C. Fiechter  DEFENDANT: Carl Wescott; Monette Stephens, individually and as Trustee of the Wescott-Stephens Family Trust; Pook Snook Dock, LP; and <input checked="" type="checkbox"/> DOES 1 TO 25	
<input type="checkbox"/> COMPLAINT <input checked="" type="checkbox"/> <b>CONTRACT</b> <input checked="" type="checkbox"/> <b>AMENDED COMPLAINT (Number):</b> Third <input type="checkbox"/> CROSS-COMPLAINT <input type="checkbox"/> <b>AMENDED CROSS-COMPLAINT (Number):</b>	CASE NUMBER: CGC-10-496091
<b>Jurisdiction (check all that apply):</b> <input type="checkbox"/> ACTION IS A LIMITED CIVIL CASE Amount demanded <input type="checkbox"/> does not exceed \$10,000 <input type="checkbox"/> exceeds \$10,000 but does not exceed \$25,000 <input checked="" type="checkbox"/> ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000) <input type="checkbox"/> ACTION IS RECLASSIFIED by this amended complaint or cross-complaint <input type="checkbox"/> from limited to unlimited <input type="checkbox"/> from unlimited to limited	

1. Plaintiff\* (name or names): Frederick C. Fiechter

alleges causes of action against defendant\* (name or names): Carl Wescott; Monette Stephens, individually and as trustee of the Wescott-Stephens Family Trust; Pook Snook Dock LP; and DOES 1 to 25.

2. This pleading, including attachments and exhibits, consists of the following number of pages: 16

3. a. Each plaintiff named above is a competent adult

☐ except plaintiff (name):

- (1) ☐ a corporation qualified to do business in California  
 (2) ☐ an unincorporated entity (describe):  
 (3) ☐ other (specify):

b. ☐ Plaintiff (name):a. ☐ has complied with the fictitious business name laws and is doing business under the fictitious name (specify):b. ☐ has complied with all licensing requirements as a licensed (specify):c. ☐ Information about additional plaintiffs who are not competent adults is shown in Attachment 3c.

4. a. Each defendant named above is a natural person

☐ except defendant (name):☐ except defendant (name):

- (1) ☐ a business organization, form unknown  
 (2) ☐ a corporation  
 (3) ☐ an unincorporated entity (describe):  
 (4) ☐ a public entity (describe):  
 (5) ☐ other (specify):

- (1) ☐ a business organization, form unknown  
 (2) ☐ a corporation  
 (3) ☐ an unincorporated entity (describe):  
 (4) ☐ a public entity (describe):  
 (5) ☐ other (specify):

\*If this form is used as a cross-complaint, plaintiff means cross-complainant and defendant means cross-defendant.

Page 1 of 2

PLD-C-001

SHORT TITLE:  
Fiechter v. Wescott, et al.

CASE NUMBER:  
CGC-10-496091

4. (Continued)
- b. The true names of defendants sued as Does are unknown to plaintiff.
- (1) ☒ Doe defendants (specify Doe numbers): 1-10 were the agents or employees of the named defendants and acted within the scope of that agency or employment.
- (2) ☒ Doe defendants (specify Doe numbers): 11-25 are persons whose capacities are unknown to plaintiff.
- c. ☐ Information about additional defendants who are not natural persons is contained in Attachment 4c.
- d. ☐ Defendants who are joined under Code of Civil Procedure section 382 are (names):
5. ☐ Plaintiff is required to comply with a claims statute, and
- a. ☐ has complied with applicable claims statutes, or
- b. ☐ is excused from complying because (specify):
6. ☐ This action is subject to ☐ Civil Code section 1812.10 ☐ Civil Code section 2984.4.
7. This court is the proper court because
- a. ☒ a defendant entered into the contract here.
- b. ☒ a defendant lived here when the contract was entered into.
- c. ☒ a defendant lives here now.
- d. ☒ the contract was to be performed here.
- e. ☐ a defendant is a corporation or unincorporated association and its principal place of business is here.
- f. ☐ real property that is the subject of this action is located here.
- g. ☐ other (specify):
8. The following causes of action are attached and the statements above apply to each (each complaint must have one or more causes of action attached):
- ☒ Breach of Contract
- ☒ Common Counts
- ☒ Other (specify): Fraud  
Fraudulent Conveyance
9. ☐ Other allegations:
10. Plaintiff prays for judgment for costs of suit; for such relief as is fair, just, and equitable; and for
- a. ☒ damages of: \$ 619,516.44
- b. ☒ interest on the damages
- (1) ☐ according to proof
- (2) ☒ at the rate of (specify): 10 percent per year from (date): May 7, 2008
- c. ☒ attorney's fees
- (1) ☐ of: \$
- (2) ☒ according to proof.
- d. ☒ other (specify): Issuance of a pre-judgment writ of attachment;  
imposition of an equitable lien on real property; and  
such other further relief as the court deems just.
11. ☐ The paragraphs of this pleading alleged on information and belief are as follows (specify paragraph numbers):

Date: September 29, 2011

Dan G. Berris

(TYPE OR PRINT NAME)



(SIGNATURE OF PLAINTIFF OR ATTORNEY)

(If you wish to verify this pleading, affix a verification.)

PLD-C-001(2)

SHORT TITLE:  
Fiechter v. Wescott, et al.

CASE NUMBER:  
CGC-10-496091

SECOND  
(number)

## CAUSE OF ACTION-Common Counts

ATTACHMENT TO ☒ Complaint ☐ Cross-Complaint

(Use a separate cause of action form for each cause of action.)

CC-1. Plaintiff (name): Frederick C. Fiechter

alleges that defendant (name): Carl Wescott; and DOES 1 to 25

became indebted to ☒ plaintiff ☐ other (name):

- a. ☐ within the last four years
- (1) ☐ on an open book account for money due.
- (2) ☐ because an account was stated in writing by and between plaintiff and defendant in which it was agreed that defendant was indebted to plaintiff.
- b. ☒ within the last ☒ two years ☐ four years
- (1) ☐ for money had and received by defendant for the use and benefit of plaintiff.
- (2) ☐ for work, labor, services and materials rendered at the special instance and request of defendant and for which defendant promised to pay plaintiff.
- ☐ the sum of \$
- ☐ the reasonable value.
- (3) ☐ for goods, wares, and merchandise sold and delivered to defendant and for which defendant promised to pay plaintiff
- ☐ the sum of \$
- ☐ the reasonable value.
- (4) ☒ for money lent by plaintiff to defendant at defendant's request.
- (5) ☒ for money paid, laid out, and expended to or for defendant at defendant's special instance and request.
- (6) ☐ other (specify):

CC-2. \$ 619,516.44, which is the reasonable value, is due and unpaid despite plaintiff's demand, plus prejudgment interest ☐ according to proof ☒ at the rate of 10.00 percent per year from (date): July 15, 2008

CC-3. ☒ Plaintiff is entitled to attorney fees by an agreement or a statute

☐ of \$

☒ according to proof.

CC-4. ☐ Other:

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PLD-C-001(3)

SHORT TITLE:

Fiechter v. Wescott, et al.

CASE NUMBER:

CGC-10-496091

THIRD

(number)

## CAUSE OF ACTION-Fraud

ATTACHMENT TO ☒ Complaint ☐ Cross-Complaint

(Use a separate cause of action form for each cause of action.)

FR-1. Plaintiff (name): Frederick C. Fiechter

alleges that defendant (name): Carl Wescott; and DOES 1 to 25

on or about (date): May 7, 2008

defrauded plaintiff as follows:

FR-2. ☒ Intentional or Negligent Misrepresentation

a. Defendant made representations of material fact ☐ as stated in Attachment FR-2.a ☒ as follows:  
Wescott represented to Plaintiff as follows: 1) that Wescott had provided to Plaintiff a true and accurate personal balance sheet stating his assets, liabilities and accounts receivable; and 2) that Wescott had a net worth of over \$28 Million.

b. These representations were in fact false. The truth was ☐ as stated in Attachment FR-2.b ☒ as follows:

Wescott provided to Plaintiff a personal balance sheet which falsely portrayed and did not accurately state his assets, liabilities or accounts receivable.

c. When defendant made the representations,

☒ defendant knew they were false, or

☐ defendant had no reasonable ground for believing the representations were true.

d. Defendant made the representations with the intent to defraud and induce plaintiff to act as described in item FR-5. At the time plaintiff acted, plaintiff did not know the representations were false and believed they were true. Plaintiff acted in justifiable reliance upon the truth of the representations.

FR-3. ☒ Concealment

a. Defendant concealed or suppressed material facts ☐ as stated in Attachment FR-3.a ☒ as follows:  
Wescott concealed his true financial worth and failed to disclose debts and obligations he had to others that reflected on the nature, extent and value of his assets.

b. Defendant concealed or suppressed material facts

☐ defendant was bound to disclose.

☒ by telling plaintiff other facts to mislead plaintiff and prevent plaintiff from discovering the concealed or suppressed facts.

c. Defendant concealed or suppressed these facts with the intent to defraud and induce plaintiff to act as described in item FR-5. At the time plaintiff acted, plaintiff was unaware of the concealed or suppressed facts and would not have taken the action if plaintiff had known the facts.

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Page 1 of 2



PLD-C-001(3)

SHORT TITLE: Fiechter v. Wescott, et al.	CASE NUMBER: CGC-10-496091
---	-------------------------------

THIRD

(number)

## CAUSE OF ACTION-Fraud

FR-4. ☒ Promise Without Intent to Perform

- a. Defendant made a promise about a material matter without any intention of performing it ☐ as stated in Attachment FR-4.a ☒ as follows:

At the time Wescott executed the May 7, 2008 promissory note in favor of Plaintiff, he did not have any intention of performing his obligation to repay Plaintiff under the terms of the Note.

- b. Defendant's promise without any intention of performance was made with the intent to defraud and induce plaintiff to rely upon it and to act as described in item FR-5. At the time plaintiff acted, plaintiff was unaware of defendant's intention not to perform the promise. Plaintiff acted in justifiable reliance upon the promise.

FR-5. In justifiable reliance upon defendant's conduct, plaintiff was induced to act ☐ as stated in Attachment FR-5 ☒ as follows:

Wescott induced Plaintiff to loan him money by promising Plaintiff that he would repay the principal amount of the loan together with interest and by providing Plaintiff with a personal balance sheet that inaccurately reflected Wescott's net worth to be over \$28 Million. Wescott concealed his true financial worth and failed to disclose debts and obligations he had to others that reflected on the nature, extent and value of his assets. Plaintiff would not have made the loan to Wescott if he had known Wescott's true financial worth.

FR-6 Because of plaintiff's reliance upon defendant's conduct, plaintiff has been damaged ☐ as stated in Attachment FR-6 ☒ as follows:

\$619,516.44 with interest on the unpaid principal balance to accrue from the date of the Note at the rate of 10.0% simple interest per annum.

## FR-7. Other:

Page 6

MC-025

## SHORT TITLE:

Fiechter v. Wescott, et al.

## CASE NUMBER:

CGC-10-496091

ATTACHMENT (Number): 1

(This Attachment may be used with any Judicial Council form.)

## FOURTH CAUSE OF ACTION

## FRAUDULENT CONVEYANCE

(Against Carl Wescott; Monette Stephens, individually and as trustee of the Wescott-Stephens Family Trust; Pook Snook Dook LP; and DOES 1 to 25)

While married to Monette Stephens, on May 7, 2008, Wescott executed the promissory note attached as Exhibit A in favor of Plaintiff and offered community assets as security for the loan. Moreover, the funds were loaned for use by the Wescott-Stephens marital community and Plaintiff relied on the credit of the community estate for repayment.

After Plaintiff filed his initial lawsuit against Wescott for breach of the May 7, 2008 promissory note, on February 13, 2010, Wescott entered into a transmutation agreement with Stephens consisting mainly of community assets. The transmutation agreement transferred Wescott's interest in all community assets held within the United States to Stephens to be held as her sole and separate property. Stephens thereafter transferred many, if not all, of the assets listed in the transmutation agreement to the Wescott-Stephens Family Trust and/or Pook Snook Dook LP, a limited partnership that Wescott formed under the laws of the state of Arizona after Plaintiff filed his initial Complaint.

The transfers from Wescott to Stephens, and from Stephens to the Wescott-Stephens Family Trust and/or Pook Snook Dook LP, were done with actual intent to hinder, delay or defraud Plaintiff from collecting on said Note. Notwithstanding, the community property interests of both Wescott and Stephens are liable for the debts incurred by Wescott while married to Stephens.

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

Page 7 of 7  
(Add pages as required)

**Exhibit A**

## SECURED PROMISSORY NOTE

San Francisco, CA

May 7, 2008

This agreement renegotiates the terms of and combines the Secured Promissory Notes between Carl Wescott and Frederick C. Fiechter, dated March 20, 2007 and February 14, 2008 into this new Secured Promissory Note Agreement<sup>1</sup>. Therefore in consideration the parties agree:

1. The undersigned, Carl Wescott ("Debtor"), and Frederick C. Fiechter ("Creditor") agree to combine monies owed under the Promissory Note Agreements dated March 20, 2007 and February 14, 2008 into this new Secured Promissory Note Agreement.

The Debtor, for value received, promises to pay Frederick C. Fiechter ("Creditor"), the principle sum of \$550,000.00 together with interest carried forward from previous notes in the amount of \$19,901.33, and all future accrued interest, no later than July 15<sup>th</sup>, 2008.

2. Interest on the unpaid balance will accrue from the date of the note at an annual rate equal to 18.5% per annum. Accrued interest shall be payable monthly, at the end of the period, by the 7<sup>th</sup>. For purposes of calculating monthly interest payments, interest shall be calculated on a complex compounded monthly basis. All interest calculations involving daily calculations will be calculated using complex compounded daily interest calculations, using 365 days per year.
3. In the event the Debtor is unable to pay the principle and all accrued interest by the agreed upon termination date, the interest rate on the note shall increase to 30% per annum.
4. Each payment under this Note shall be credited in the following order: (a) costs, fees, charges and advances paid or incurred by the Creditor or payable to the Creditor and interest under any provision of this Note, in such order as Creditor, in its sole and absolute discretion, elects; (b) interest payable under this Note; and (c) principle under this Note.
5. Payments of both principle and interest are to be made in lawful money of the United States of America in immediately available funds. Checks

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<sup>1</sup> See accounting for these agreements in Appendix A.

constitute payment only when collected.

6. Prior to the Maturity Date, at the option of the Creditor, this Note shall be accelerated and all remaining unpaid principle and accrued and unpaid interest shall become due and payable immediately upon the earlier of: (a) Debtor's filing of any petition or action for relief under any bankruptcy, reorganization, insolvency or moratorium law or any other law for relief of, or relating to, debtors now or hereafter in effect or making any assignment for the benefit of creditors or takes any corporate action in furtherance of any of the foregoing; or (b) the filing of an involuntary petition against Debtor under any bankruptcy statute now or hereafter in effect or the appointment of a custodian, receiver, trustee or assignee for the benefit of creditors (or similar official) to take possession, custody or control of any property of Debtor; or (c) Debtor being more than ten (10) business days late on any owed payment to Creditor.
7. In addition, prior to the Maturity Date, any time that Debtor sells or otherwise transfers the property subject to the Third Deed of Trust, as described in Section 11, below, this Note shall be accelerated and the remaining unpaid principle, and any accrued and unpaid interest, shall become due and payable immediately upon such sale or transfer.
8. The Debtor acknowledges that the default in the payment of any sum due under this Note will result in losses and additional expenses to the Creditor in servicing the indebtedness evidenced by this Note, handling such delinquent payments, and meeting its other financial obligations. Debtor further acknowledges that the extent of such loss and additional expenses is difficult and impractical to ascertain. Debtor therefore agrees that, if any payment due under this Note, except the final termination payments not made within ten (10) business days when due, Debtor shall pay a Late Charge of the greater of \$500 or 1.5% of the amount due, to the Creditor as liquidated damages to cover expenses incurred in handling such delinquent payment.
9. Pre-payment penalty: There is no pre-payment penalty on this note.
10. Debtor agrees to pay the following costs. Expenses and attorney fees paid or incurred by Creditor, or adjudged by a court: (a) reasonable costs of collections and costs, expenses, and attorney fees paid or incurred in the connection with the collection of enforcement of this Note, whether or not suit is filed; (b) reasonable costs, expenses, and attorney fees paid or incurred in connection with representing Creditor in a claim under this Note; (c) reasonable costs, expenses, and attorney fees incurred to protect

the lien of the Second Deed of Trust; and (d) costs of suit and such sum as the court may adjudge as attorney fees in any action to enforce payment of this Note or any part of it.

11. This Note is secured by that certain Third, or better, Deed of Trusts in the following properties referenced by the Debtor's Balance Sheet<sup>2</sup>, made by the Debtor for benefit of the Creditor, as beneficiary. This Third Deed of Trust may be recorded only if Debtor is in default under this Note.

- 4175 W. Dry Creek
- 1083 Mississippi Street
- 19504 Sweetwater, 2<sup>nd</sup> Deed of Trust
- 20195 Sweetwater, 2<sup>nd</sup> Deed of Trust
- 7950 Hearst, 2<sup>nd</sup> Deed of Trust
- 3886 Noriega, 2<sup>nd</sup> Deed of Trust
- 9575 Venturi, 2<sup>nd</sup> Deed of Trust
- Bradshaw, Deed of Trust
- Dyer Mountain LLC, Convertible Debt
- 11385 East Rd
- 120 Marin View
- 1720 High Street
- 30901 Sherwood Rd.
- 430 Scenic Ave. - 84% Equity
- 555 4<sup>th</sup> St., #411
- 5700 Robinson Creek
- 5760 Chemise Rd.
- 853 Ashbury St., SF, CA 94117
- 9501 Lane Drive
- Oroville Industrial Park
- Atwater Retail, LLC
- Bradshaw Urban Development, LLC
- Granada, Nicaragua Property
- Rocha, Uruguay Property
- La Ceiba, Honduras Property
- Ecuador Property (HSJ), 663 Acres
- Ecuador Property (Sunrise)
- Panama Property Bayano, 1000 Acres
- Panama Property Centro Madrono, 9000 Acres

12. Carl Wescott absolutely, unconditionally and irrevocably personally guarantees to Debtor the due and punctual payment of all sums due under

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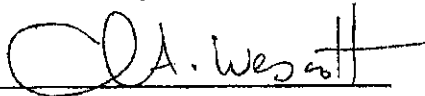
<sup>2</sup> See Appendix B

this Note.

13. Debtor, Guarantors, endorsers, and all other persons liable or to become liable on this Note waive presentment, protest, and demand; notice of protest, demand of dishonor; and all other notices or matters of a like nature
14. Any notice required to be provided in this Note shall be given in writing and sent by: (a) first class certified United States mail, postage prepaid, return receipt requested; or (b) a nationally recognized overnight courier service, marked for next day delivery. All notices shall be deemed effective on the earliest of (a) actual receipt; (b) rejection of delivery; (c) if sent by certified mail, the third day on which regular United States mail delivery service is provided after the day of mailing or, if sent by overnight delivery service, on the next day in which such service makes next-business-day deliveries after the day of sending.
15. If Creditor delays in exercising or fails to exercise any of its rights under this Note, that delay or failure shall not constitute a waiver of any Creditor rights or any breach, default, or failure of condition under this Note.
16. This note shall inure to and bind the heirs, legal representatives, successors, and assigns of Creditor. Creditor may assign this Note or any proceeds of it or assign or delegate any of its rights or obligations, upon five (5) business day's prior written notice to the other party. Debtor must obtain written permission from creditor to assign this note.
17. If any provision of the Note, or the application of it to any party or circumstance is held void, invalid, or unenforceable by a court of competent jurisdiction, the remainder of the Note, and application of such provision to other parties or circumstances shall not be affected thereby, the provision of this Note being severable in any such instance.
18. No provision of this Note may be waived or modified orally, but only in writing signed by both Debtor and Creditor.
19. The terms of this Note shall be interpreted and construed in accordance with the laws of the State of California, excluding any choice of law rules that may direct the application of the laws of another jurisdiction. The Debtor, Creditor, and the Guarantors submit to the jurisdiction of any State or Federal Court sitting in the State of California, in any action or proceeding arising out of or relating to this Note.

20. The Debtor agrees to pay all wire transfer fees on both sides for any payment or repayment of monies associated with this Note.

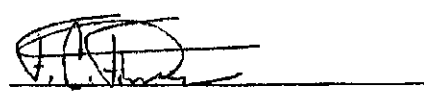
Carl Wescott ("DEBTOR")



Dated: 5/7/2008

Address: 853 Ashbury Street  
San Francisco, CA 94117

Frederick C. Fiechter ("CREDITOR")



Dated: 5/7/2008

Address: 1896 Pacific Ave.: #502  
San Francisco, CA 94109



**Appendix A**

Accounting of Loans from 3/20/2007 and 2/14/2008

<b>Summary of Feb 14th, 2008 Loan to Carl</b>			
Amount Loaned	\$400,000		
Interest	18.50%		
		<b>Date</b>	<b>Amount</b>
		02/14/08	\$400,000
Initial Loan	\$415,741		
<b>Calculated Total as of:</b>		<b>5/7/08</b>	
		<b>TOTAL: \$415,741.27</b>	

**Summary of Mar 20th, 2007 Loan to Carl**Amount Loaned  
Interest\$400,000  
18.50%

Period 1 Interest

(3 months, March 20th -  
June 20th)  
\$17,340

Amount Returned

(\$250,000) (On June 20th)

Interest Forgiven

(\$5,500) (Rent through end of  
November)**Carried as of 6/20****\$161,839.58**

Amount Carried

\$187,983

Forgiven Interest (1st-Desktop)

(\$2,708)

Forgiven Interest (2nd-laptop)

(\$2,287)

Forgiven Interest (rent through end of March)

(\$2,106)

Forgiven Interest (3rd-Mac Air)

(\$2,421)

Cash (\$5000)

(\$5,197)

Cash (\$17000)

(\$17,579)

Forgiven Interest (rent through end of June)

(\$1,526)

**Calculated Total as of:****5/7/08****TOTAL****\$154,159.86**

Amount	Date
\$161,839.58	06/20/07
(\$2,502.42)	11/19/07
(\$2,141.49)	12/18/07
(\$2,000.00)	1/17/08
(\$2,314.89)	2/1/08
(\$5,000.00)	2/14/08
(\$17,000.00)	2/25/08
(\$1,500.00)	3/31/08

**Appendix B**

**Balance Sheet of Carl Wescott**

**Carl Wescoff**  
Balajosa Street  
 4/17/2008

<b>Assets</b>		
<b>Current Assets</b>		
Cash in Bank	\$85,891	
Accounts Receivable (Rents)	\$717,072	
Accounts Receivable (Deaths of Trust)	\$252,213	
<b>Total Current Assets</b>	<b>\$1,045,186</b>	
<b>Fixed Assets</b>		
1083 Mississippi Street	\$787,000	
11385 East Road	\$940,000	
120 Main View	\$208,822	
1720 High Street	\$413,650	
18504 Sweetwater 2nd Deed of Trust	\$674,861	
20168 Sweetwater 2nd Deed of Trust	\$425,000	
30804 Shermood Road	\$1,550,000	
3888 Noriega 2nd Deed of Trust	\$110,000	
4175 W. Dry Creek	\$2,500,000	
430 Seaside Avenue - 84% Equity	\$760,000	
555 4th St. #411	\$395,000	
5760 Robinson Creek	\$1,700,000	
57601 Charmise Rd.	\$2,650,000	
7850 Harist 2nd Deed of Trust	\$975,000	
833 Ashbury	\$2,850,000	
8801 Lane Drive	\$850,000	
8575 Verbal 2nd Deed of Trust	\$770,500	
Braishaw Deed of Trust	\$2,843,558	
Dyer Mountain LLC - Commercial Debt	\$215,000	
Oroville Industrial Park	\$4,550,000	
Atwater Retail, LLC	\$350,000	
Braishaw Urban Development, LLC	\$852,739	
Granada, Nicaragua Property - 23ac	\$185,000	
Rocher, Uruguay Property - 100 hectares	\$900,000	
La Ceiba, Honduras Property - 371 acres	\$1,250,000	
Escudor Property (Ranches)	\$3,165,000	
Escudor Property (Ranches)	\$1,700,000	
Panama Properties Bayano, 1000 acres	\$875,000	
Panama Properties Centro Madriso-9100 acres*	\$3,378,830	
<b>Total Assets</b>	<b>\$38,461,276</b>	

<b>Liabilities</b>	
<b>Current Liabilities</b>	
Credit Cards Payable, Bank	\$234,760
Notes Payable, Bank	\$778,205
<b>Total Current Liabilities</b>	<b>\$1,012,965</b>
<b>Long-term Liabilities</b>	
Notes Payable, Bank	\$585,265
1083 Mississippi St Loans	\$700,000
11385 East Road Loans	\$1,844,335
4175 W. Dry Creek Loans	\$488,940
430 Seaside Loans	\$1,002,513
5760 Robinson Loans	\$1,457,178
5801 Lane Dr. Loans	\$541,073
833 Ashbury Loans	\$2,294,078
555 4th St LOC	\$404,514
30801 Sherwood Loans	\$907,478
<b>Total Liabilities</b>	<b>\$11,184,185</b>
<b>Net Worth</b>	<b>\$28,255,119</b>
<b>Total Liabilities and Net Worth</b>	<b>\$39,461,276</b>

\*See attached spreadsheet titled "Panama Properties Breakdown"

*Carl Wescoff*

# **Exhibit B**

**Notice to all attorneys:** Mandatory electronic filing began January 1, 2005. See [www.canb.uscourts.gov](http://www.canb.uscourts.gov) for details.

Form NDC

**UNITED STATES BANKRUPTCY COURT  
Northern District of California**

In Re: Carl Alexander Wescott  
Debtor(s)

Case No.: 11-34426 DM 7  
Chapter: 7

**ORDER AND NOTICE OF DISMISSAL  
FOR FAILURE TO COMPLY**

**Notice is given** the debtor(s) having failed to comply with this court's Order For Individual(s) In Chapter 7 And Chapter 13 Cases To File Required Documents And Notice Re Automatic Dismissal , filed on 12/15/2011 , it is ordered that this case is hereby **dismissed**.

Dated: 12/30/11

By the Court:

Dennis Montali  
United States Bankruptcy Judge

## Notice Recipients

District/Off: 0971-3

User: rwong

Date Created: 12/30/2011

Case: 11-34426

Form ID: NDC

Total: 93

### Recipients of Notice of Electronic Filing:

ust	Office of the U.S. Trustee / SF	USTPRegion17.SF.ECF@usdoj.gov
tr	Barry Milgrom	barrymilgrom@gmail.com
aty	Jonathan J. Damen	bknotice@rcolegal.com
aty	Neil Ison	isonlaw@yahoo.com
aty	Robert N. Weaver	rnweaver@pacbell.net

TOTAL: 5

### Recipients submitted to the BNC (Bankruptcy Noticing Center):

db	Carl Alexander Wescott	853 Ashbury Street	San Francisco, CA 94117
cr	HSBC Bank USA, National Association, as Trustee for the holders of the certificates issued by Deutsche Alt-A Securities Mortgage Loan Trust, Series 2006-AR3, through its servicing agent America's Routh Crabtree Olsen 1241 E. Dyer Rd. Ste.250 Santa Ana, CA 92705		
cr	Frederick Charles Fiechter	Less & Weaver	1388 Sutter Street San Francisco San Francisco, CA 94109
smg	Chief Tax Collection Section	Employment Development Section	P.O. Box 826203 Sacramento, CA 94230
smg	CA Employment Development Dept.	Bankruptcy Group MIC 92E	P.O. Box 826880 Sacramento, CA 94280-0001
smg	CA Franchise Tax Board	Special Procedures Bankruptcy Unit	P.O. Box 2952 Sacramento, CA 95812-2952
12352386	ADVANTA BUSINESS SERVICES	11850 S. ELECTION DR	DRAPER, UT 84020
12352388	AMERICA'S SERVICING COMPANY	7495 NEW HORIZON WAY	FREDERICK, MD 21703
12352389	AMERICA'S SERVICING COMPANY	PO Box 60768	Los Angeles, CA 90060
12352387	AMERICAN GENERAL FINANCE	PO BOX 31016	CHARLESTON SC 29417
12352390	AMEX	P O BOX 7871	FORT LAUDERDALE, FL 33329
12352391	Arthur Silverman and Nancy Oakes	15 Elm	San Anselmo CA 94960
12352392	BANK OF CALIFORNIA	640 BATTERY ST	SAN FRANCISCO CA 94111-1807
12352393	BANK ONE	NORTH 54 W	13600 WOODALE MENOMONEE FALLS, WI 53051
12352394	BANK ONE, NA	N 54 W	13600 WOODALE DR MENOMONEE, WI 53051
12352395	BANKAMERICA	4066	1825 E BUCKEYE RD PHOENIX, AZ 85034
12352396	BANKONE NA	201 N WALNUT ST	WILMINGTON, DE 19801
12352397	BARCLAYS BANK DELAWARE	Card Services	PO Box 8801 Wilmington, DE 19899-8801
12352399	BPG	2747 San Pablo Avenue	Berkeley, CA 94702
12352402	BUSINESS AND PROFESSIONAL SERVICES	816 S CENTER ST	RENO, NV 89501
12352398	Blythe Klein	PO Box 1158	Cobb, CA 95426
12352400	Brian Reed	1085 Mississippi Street	San Francisco, CA 94107
12352401	Broadway Atwater Properties LLC	45 Mitchell Blvd. 14	San Rafael, CA 94903
12352403	CCI Funding I LLC	8101 E Prentice Avenue	Greenwood Village, CO 80111
12352433	CITI CARDS CBSDNA	POB 6241	SIOUX FALLS, SD 57117
12352431	CITIBANK	General Correspondence	P.O. Box 6500 Sioux Falls, SD 57117
12352434	CITIBANK N. A.	15851 Clayton Road MS-301	Ballwin, MO 63011
12352436	CITIMORTGAGE INC	15851 Clayton Road	Ballwin, MO 63011
12352424	Chase	1400 E NEWPORT CENTER DRIVE	DEERFIELD BEACH, FL 33442
12352404	Chase	PO Box 78148	Phoenix AZ 85062
12352427	Chase Manhattan Mortgage	200 OLD WILSON BRD	WORTHINGTON, OH 43085
12352429	Chase Manhattan Mortgage	802 DELAWARE AVENUE 8TH FL	WILMINGTON, DE 19801
12352428	Chase Manhattan Mortgage	PO BOX 24696	COLUMBUS, OH 43224
12352425	Chase Manhattan Mortgage	PO BOX 509011	10790 RANCHO BERNARDO RD SAN DIEGO, CA 92510
12352430	Chase Manhattan Mortgage	POB 31098	TAMPA, FL 33631
12352432	Citi	PO BOX 6500	SIOUX FALLS SD 57117
12352435	Citibank	PO Box 9438	Gaithersburg, MD 20898
12352437	Commercial Capital Inc.	8101 E Prentice Avenue	Greenwood Village, CO 80111
12352438	David Nevraumont	23 Blanca Drive	Novato CA 94947
12352439	David and Leigh Kirk	855 Folsom Street, 734	San Francisco CA 94107
12352440	Donecker Consulting, Inc.	2939 Rockwell Court	Davis, CA 95616
12352441	Doug Gladstone	621 Boulevard Way	Piedmont CA 94610
12352442	Eric Reisner	1504 haverford Way	McKinney, TX 75071
12352446	FIRST USA	PO Box 8650	Wilmington, DE 19899
12352448	FIRST USA BANK	1001 Jefferson Plaza	Wilmington, DE 19801
12352447	FIRST USA BANK	2500 Westfield Road	Elgin, IL 60123
12352449	FIRST USA BANK	2500 Westfield Road Suite 6	Elgin, IL 60123
12352444	First Data	5565 Glenridge Connector NE, 2000	Atlanta, GA 30342
12352443	Frederick Charles Fiechter, Mary Yates	1896 Pacific Avenue 502	San Francisco, CA 94109
12352450	GEMB MERV GENERAL MOTORS MTG COR	3451 Hammond Avenue	PO Box 780 Waterloo, IA 50702

12352452 GMAC Mortgage PO Box 4622 Waterloo, IA 50704  
 12352451 Gina Perry 1060 Mississippi St. A San Francisco, CA 94107  
 12352453 Gold Line Investment Group, LLC 216 N. East St. Woodland C 95776  
 12352454 Ionian 36, LLC 45 Mitchell Blvd. 14 San Rafael, CA 94903  
 12378457 JPMorgan Chase Bank, N.A. c/o Shermeta, Adams & Von Allmen, P.C. P.O. Box 80908 Rochester Hills, MI 48308-0908  
 12352455 Jacobszoon Forestry Services PO Box 225 Cazadero, CA 95470  
 12352458 Jason Schwager 45 Mitchell Blvd. 14 San Rafael, CA 94903  
 12352456 Joe Martin and Leigh Martin 4321 Timothy Drive Merritt Island, FL 32593  
 12352459 Joe Stowe 1636 Nina Court Santa Rosa Ca 95403  
 12352457 John Schrader and Nyra Krstovich 297C Kansas Street San Francisco, CA 94103  
 12352460 Kooi Hong and Leong Cheong 668 Blair Avenue Piedmont, CA 94611  
 12352461 Krista and Steve Donecker 2939 Rockwell Court Davis CA 95618  
 12352462 Lafayette Capital Group 270 Lafayette Circle Lafayette, CA 94549  
 12352463 Laurence Andrews PO Box 2636 Vacaville CA 95696  
 12352464 Magnate Fund LLC 1355 Willow Way, Suite 261 Concord, CA 94520  
 12352465 Michael Dequine 2295 Gateway Oaks Dr. 140 Sacramento, CA 95833  
 12352466 Mike Gill 216 N. East St. Woodland CA 95776  
 12352467 Nichole Cheline Paseo de las Primaveras 33 Rancho contento 45222 Zapopan Jalisco, Mexico  
 12352468 Noel Knight 2616 Harrison St. 1 Oakland, CA 94612  
 12352469 Nor Cal Investment Group, LLC 216 N. East St. Woodland CA 95776  
 12352470 Nova Designs 297C Kansas Street San Francisco, CA 94103  
 12352471 Palms Owners Association 555 4th Street San Francisco, CA  
 12352472 Peng Leong and Kooi Hong Leong Cheong Also as Trustees DSTL Family Trust 668 Blair Avenue Piedmont, CA 94611  
 12352473 Quality Housing Solutions, LLC 1900 GRASS VALLEY HWY AUBURN CA 95603  
 12352474 Randy Jacobszoon PO Box 225 Cazadero, CA 95470  
 12352475 Rob Lonsdale PO Box 394 Woodacre CA 94973  
 12352476 S. C. Anderson Inc. 2160 Mars Court Bakersfield CA 93380-1747  
 12352477 SMR 45 Mitchell Blvd. 14 San Rafael, CA 94903  
 12352478 Sterling Pacific 1205 Freedom Blvd. Suite 2 Watsonville CA 95076  
 12352479 Suneet Singal 101 Barnhart Circle Sacramento CA 95835  
 12352480 Susan McShannock 45 Mitchell Blvd. 14 San Rafael, CA 94903-2011  
 12352482 TNX Capital 1896 Pacific Avenue #502 San Francisco, CA 94109  
 12352481 Tim Schick 2747 San Pablo Avenue Berkeley, CA 94702  
 12352483 UNLV CITI 549113033677 P.O. Box 6241 Sioux Falls, SD 57117  
 12352487 WELLS FARGO HOME MORTGAGE 3476 STATEVIEW BLVD FORT MILL, SC 29715  
 12352484 Weeks Well Drilling 6100 Highway 12 Sebastopol, CA 95472  
 12352485 Wells Fargo P. O. Box 536205 Atlanta, GA 30353  
 12352488 Woody Marin 2802 Marlow Road Santa Rosa, CA 95403

TOTAL: 88



# **Exhibit C**

ROBERT N. WEAVER, ESQ. (SBN 78528)

**LESS & WEAVER  
ATTORNEYS AT LAW**

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1388 Sutter Street, Suite 820  
San Francisco, CA 94109

Attorneys for  
FREDERICK C. FIECHTER

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re:	) Case No. 12-30143 DM
	) Chapter 7
Carl Alexander Wescott and	)
Monette Rosemarie Stephens	) Hon. Dennis Montali
	)
Debtors	)
	)
_____	)
Frederick C. Fiechter	) Adversary Proceeding No. _____
	)
Plaintiff	)
v.	) <b>COMPLAINT TO DETERMINE</b>
	) <b>DISCHARGEABILITY OF DEBT</b>
	)
Carl Alexander Wescott and	) (11 U.S.C. §§ 523(a)(2)(B) & 523(a)(4))
Monette Rosemarie Stephens	)
	)
Defendants.	)
_____	)

Frederick C. Fiechter, a creditor herein, now files his complaint to determine dischargeability of debt and to seek denial of discharge and states as follows:

**JURISDICTION AND VENUE**

1. Jurisdiction is vested in this Court by provisions of 28 U.S.C. §157, 28 U.S.C. §1334(b), and 11 U.S.C. §523.

2. This is a core proceeding related to the determination of dischargeability of debt pursuant to 28 U.S.C. §157(b)(2)(I), and seeking the denial of discharge pursuant to 28 U.S.C. §157(b)(2)(J).

3. Plaintiff holds claims against the debtor and defendants.

4. Venue in this District is proper pursuant to 28 U.S.C. § 1409(a).

### **PARTIES**

5. The debtors, Carl Alexander Wescott and Monette Rosemarie Stephens, are, and at all times relevant herein were, husband and wife residing in San Francisco, California.

6. At all times hereinmentioned, and in doing the things complained of, Debtor Carl Alexander Wescott ("**Wescott**") was a real estate broker licensed by the State of California and/or held himself out to Plaintiff as a licensed real estate broker and as a licensed securities sales person with broker dealer licenses (Series 22, 63, 24).

7. Plaintiff Frederick C. Fiechter ("**Fiechter**") is a creditor of the Debtors and owed money pursuant to a judgment entered in his favor against Debtor Carl Alexander Wescott in the amount of \$1,275,573.31 (plus additional interest from June 15, 2011) by the District Court of the State of Nevada, Douglas County, on August 5, 2011, and later entered as a sister-state judgment in the California Superior Court, in and for San Francisco, on August 26, 2011 in the amount of \$1,305,058. The judgment is based on a transaction whereby Fiechter was induced by Wescott to transfer 162 Glen Court, Stateline, Nevada to Wescott in exchange for promises and an unsecured promissory note from Wescott in the amount of \$1,050,000.

8. Plaintiff Frederick C. Fiechter is a further creditor of the Debtors and owed additional money as follows: \$564,516 principal pursuant to a Promissory Note dated May 7, 2008 with accrued interest (at 10% simple) of \$186,490; and a \$55,000 profit share from a joint venture loan retained by Wescott on or about September 2, 2008 with accrued interest (at 10% simple) of \$19,954.

9. Plaintiff Fiechter is, and at all times relevant was, a resident of San Francisco, California.

1 **FACTUAL BACKGROUND**

2 10. Fiechter was introduced to Wescott in 2006 while Fiechter was searching for a second  
3 home in Sonoma County. Wescott acted as Fiechter's real estate broker and earned a commission  
4 on the sale during or about November 2006. Wescott subsequently acted as Fiechter's broker and  
5 earned a second commission when Fiechter purchased a home in San Francisco. At all times  
6 mentioned herein, Wescott held himself out as a wealthy and successful investor with substantial real  
7 estate holdings and income adequate to repay Fiechter for debts incurred as stated below in more  
8 detail.

9 11. In the course of representing Fiechter and closing the Sonoma County purchase,  
10 Wescott advised and represented to Fiechter that he was involved in other business and development  
11 ventures and that the ventures presented investment opportunities to Fiechter. In particular, in  
12 November 2006 Wescott approached Fiechter for a \$200,000 loan to fund various real estate projects  
13 at an 18.5% interest rate, which was the same rate Wescott indicated was being paid to him on  
14 money owed to him. The loan was made and the principal and interest were paid in full on February  
15 20, 2007.

16 12. Less than a month later, Wescott approached Fiechter for a second loan, this time for  
17 \$400,000 and once again at an 18.5% interest rate. Fiechter made the loan and took back a note  
18 dated March 20, 2007, due and payable June 2007 (the "**March 2007 Note**"). Wescott repaid  
19 \$250,000 of the principal but the remaining principal of \$150,000 was unpaid along with all the  
20 interest. Eventually interest of \$33,246 was paid, but no further principal or interest was ever paid.

21 13. In November 2007 Wescott proposed that Fiechter fund a loan (or investment) of  
22 \$110,000 to a developer in Florida with Wescott acting as licensed real estate professional. As  
23 proposed by Wescott, after repayment of principal additional proceeds would be shared 50/50.  
24 Fiechter funded the loan and it was presumably paid to the Florida developer on terms negotiated  
25 by Wescott. On or about May 2008 the Florida developer repaid \$250,000 to Wescott, who repaid  
26 Fiechter the principal amount of \$110,000, \$15,000 of Fiechter's \$70,000 profit split and gave  
27 Fiechter a check for the balance the profit split (\$55,000). Before Fiechter was able to negotiate the  
28

1 check, Wescott advised Fiechter that he had spent the money and that it was not available to  
2 Fiechter. The \$55,000 profit split (hereinafter, **the “Florida Profit Split”**) has never been paid.

3 14. In February 2008 Wescott approached Fiechter to borrow an additional \$400,000 from  
4 Fiechter and offered to pay 18.5% interest, and advised Fiechter that the rate was identical to what  
5 Wescott was collecting on money owed to him on other investments or loans. Concurrently with  
6 the request, or shortly thereafter, and at Fiechter’s request, Wescott gave Fiechter a **first written**  
7 **statement of assets** wherein he represented, in writing, that he had “over 70 properties free and  
8 clear overseas [valued] over \$10 mil.” and “U.S. Properties for over \$12.5 mil. equity” with a total  
9 “real estate equity of over \$22.5 mil.” In reliance on the representation of financial wealth, and  
10 Wescott’s represented ability to repay Fiechter’s loans, Fiechter loaned Wescott an additional  
11 \$400,000 on or about February 14, 2008 and was given a promissory note payable on or before  
12 March 31, 2008 with interest at 18.5% per annum (**the “February 2008 Note”**). No payment has  
13 ever been made on the February 2008 Note.

14 15. During May 2008 Fiechter entered negotiations with Wescott to address the  
15 outstanding balance owed on the March 2007 Note and the unpaid February 2008 Note. In the  
16 course of these negotiations Wescott gave Fiechter a **second written financial statement**, this one  
17 dated April 17, 2008. This statement showed numerous assets with a total value of \$39,461,275,  
18 and liabilities of \$11,198,156 for a net worth of \$28,253,119. At the request of Wescott, and in  
19 reliance on his representation of a net worth in excess of \$28 million, Fiechter agreed to extend  
20 Wescott additional time to repay the March 2007 Note and February 2008 Note and renewed the  
21 debt by means of a new promissory note dated May 7, 2008 (**the “Consolidated Note”**) for the  
22 combined unpaid principal of \$550,000 and accrued interest to the date of the Consolidated Note  
23 in the additional amount of \$19,901. The Consolidated Note for \$569,901 was payable in full on  
24 July 15, 2008. \$5,385 of the principal has been paid on the Consolidated Note, reducing principal  
25 to \$564,516, and partial interest payments were made from May 2008 through December 2008  
26 totaling \$36,703. The Consolidated Note provides, *inter alia*, that reasonable attorneys fees and  
27 costs incurred in connection with the collection or enforcement of the Note are recoverable.  
28

1           16. On or about July 3, 2008 Wescott gave Fiechter a **third written financial statement**.  
2           This statement was dated May 14, 2008 and listed numerous assets, both domestic and foreign, with  
3           a purported value of \$87,764,190, and liabilities of \$36,417,357, for a total net worth of  
4           \$51,346,834. Attached to the written financial statement, Wescott also provided a "Real Estate  
5           Cash Flow Statement" which showed that Wescott estimated his 2008 net income to be \$3,987,151.

6           17. At or about the time the Consolidated Note matured on July 15, 2008, Wescott  
7           assured Fiechter that it would be paid in the "near future" and that Fiechter should not be concerned  
8           because of Wescott's substantial assets and income. Wescott also assured Fiechter that he would  
9           continue to receive interest. At or about that time, Wescott provided Fiechter with the May 14,  
10          2008 written financial statement which Fiechter believed to be accurate and more than adequate to  
11          assure repayment of the money borrowed by Wescott. In reliance on Wescott's assurances of  
12          payment and on the accuracy of the May 14, 2008 financial statement, the previous financial  
13          statements and the "Real Estate Cash Flow Statement," Fiechter informally extended the payment  
14          date on the Consolidated Note to an indefinite future date.

15          18. During or about September 2008, when Wescott advised Fiechter that \$55,000 of  
16          Fiechter's Florida Profit Split had been spent by Wescott and could not be paid, Wescott indicated  
17          to Fiechter that the sum would be added to the Consolidated Note and paid when the note was paid  
18          in full. In reliance on the continued assurances of repayment and on the written financial statements  
19          received from Wescott, Fiechter accepted the proposal.

20          19. On or about January 20, 2009 Wescott gave Fiechter a **fourth written financial**  
21          **statement**. This Statement was dated September 30, 2008 and listed numerous assets, both  
22          domestic and foreign, with a purported value of \$109,910,620, and liabilities of \$47,234,790, for  
23          a total net worth of \$62,675,831.

24          20. Before October 2008 Fiechter owned and sold 162 Glen Court, Stateline, Nevada to  
25          a third party and took back a secured promissory note for around \$1 million. In October 2008 the  
26          third party had defaulted on the note and Fiechter and the buyer were in discussion on how to  
27          address the debt and property. Fiechter eventually took ownership, and did so free and clear of any  
28          debt. Fiechter approached Wescott, as his real estate broker, to advise him concerning taking title

1 and re-selling to two individuals under a tenant in common strategy proposed by them, selling to  
2 one of the two interested individuals, listing the property for sale on the open market, renting it as  
3 a Tahoe vacation rental, or holding it for resale when the market was better.

4 21. Wescott suggested and advised Fiechter of an alternative strategy for 162 Glen Court  
5 whereby Fiechter wouldn't have to take the risk of managing the property or holding it until the  
6 market got better. Wescott proposed that Fiechter transfer ownership to him and he would hold the  
7 property for resale at a convenient time, guaranty payment to Fiechter of \$1,050,000 within one  
8 year, and that if he was able to obtain financing on the property after ownership was transferred the  
9 financing proceeds would be shared with Fiechter receiving 25% of the net proceeds which would  
10 be applied as partial payment of the \$1,050,000. Fiechter was assured by Wescott that the strategy  
11 was in his best interest and that he would be assured of payment because of Wescott's high net  
12 worth and ability to pay \$1,050,000 even if Wescott had to hold ownership of 162 Glen Court  
13 beyond one year. Based on the Wescott strategy, and in reliance on the written financial  
14 representations Wescott had previously made to Fiechter, including the September 30, 2008  
15 financial statement given to Fiechter on or about January 20, 2009 showing Wescott's net worth  
16 to be over \$62 million, Fiechter transferred ownership of 162 Glen Court to Wescott on or about  
17 January 27, 2009 and took back an unsecured promissory note for \$1,050,000 (the "**Glen Court**  
18 **Note**"). Wescott paid no cash to Fiechter for the transfer of ownership. The Glen Court Note  
19 provides, *inter alia*, that reasonable attorneys fees and costs incurred in connection with the  
20 collection or enforcement of the Note are recoverable.

21 22. On or about April 10, 2009, Wescott obtained a hard-money loan for \$600,000  
22 secured by 162 Glen Court. Wescott paid Fiechter \$140,134 in April 2009 and the Glen Court Note  
23 was reduced accordingly. Wescott eventually defaulted on the hard-money loan secured by 162  
24 Glen Court and, Fiechter is informed and believes, transferred ownership to the lender in lieu of  
25 foreclosure. Wescott kept the loan proceeds of approximately \$450,000 and never made further  
26 payment on the Glen Court Note to Fiechter.

27 23. On September 20, 2009 Wescott gave Fiechter a **fifth written financial**  
28



1 **statement.** This Statement was dated August 20, 2009 and listed numerous assets, both domestic  
2 and foreign, with a purported value of \$132,549,957, and liabilities of \$76,559,891, for a total net  
3 worth of \$76,559,891.

4 24. On November 7, 2009 Fiechter made formal written demand that Wescott  
5 immediately repay the Consolidated Note and the Glen Court Note. Wescott failed to make  
6 payment of either.

7 25. On October 25, 2010 Fiechter brought suit in Nevada to collect the balance owing on  
8 the Glen Court Note, alleging, among other things, fraud and breach of contract. Default judgement  
9 was entered against Wescott in the amount of \$921,174.24 principal, \$338,907.80 interest, \$8,865  
10 costs, and \$6,626.25 attorneys fees. The Nevada judgment was entered as a sister-state judgment  
11 in the California Superior Court in and for San Francisco on September 6, 2011 in the total amount  
12 of \$1,3050,058. No portion of this judgment has been paid.

13 26. On January 15, 2010 Fiechter brought suit in the California Superior Court in and for  
14 San Francisco to collect on the Consolidated Note, alleging, among other things, fraud and  
15 fraudulent conveyance of assets. This case was set for trial on February 27, 2012. The proceedings  
16 have been stayed by application of the automatic stay in effect as a consequence of the bankruptcy  
17 petition filed by Wescott and Stephens on January 17, 2012.

18  
19 **FIRST CLAIM FOR RELIEF**

20 **11 U.S.C. § 523 (a) (2)(B)**

21 **(Obtaining Money By Materially False Statements**  
22 **in Writing - The Consolidated Note)**

23 27. By this reference, Fiechter incorporates the allegations of Paragraphs 1 - 26 above as  
24 though fully stated herein.

25 28. On February 25, 2008 Wescott, and Stephens as her community property, obtained  
26 \$400,000 from Fiechter and gave him the February 2008 Note in return.

27 29. The aforementioned \$400,000 was obtained by means of a statement in writing,  
28 namely the February 2008 written statement of assets provided to Fiechter by Wescott as referenced



1 above in Paragraph 14 representing that Wescott and Stephens had real estate equity of over \$22.5  
2 million.

3 30. On May 7, 2008 Wescott, and Stephens as her community property, obtained an  
4 extension, renewal and refinancing of the \$400,000 February 2008 Note and the balance owed on  
5 the March 2007 Note, and caused Fiechter to accept the Consolidated Note for \$550,000 principal  
6 and \$19,901 interest.

7 31. The aforementioned extension, renewal and refinancing, and the Consolidated Note,  
8 were obtained by means of statements in writing, namely: (i) the February 2008 written statement  
9 of assets as referenced in Paragraph 14 above that Wescott and Stephens had real estate equity of  
10 \$22.5 million; and, (ii) the April 17, 2008 financial statement as referenced in Paragraph 15 above  
11 that Wescott and Stephens had a net worth of \$28,253,119.

12 32. At or about the time the Consolidated Note matured on July 15, 2008, Wescott, and  
13 Stephens as her community property, obtained an indefinite extension of payment on the  
14 Consolidated Note and caused Fiechter to not demand that it be paid on the maturity date.

15 33. The aforementioned extension of the Consolidated Note due date was obtained by  
16 means of statements in writing, namely: (i) the February 2008 written statement of assets as  
17 referenced in Paragraph 14 above that Wescott and Stephens had real estate equity of \$22.5 million;  
18 (ii) the April 17, 2008 financial statement as referenced in Paragraph 15 above that Wescott and  
19 Stephens had a net worth of \$28,253,119; (iii) the May 14, 2008 financial statement given to  
20 Fiechter on July 3, 2008 as referenced in Paragraph 16 above that Wescott and Stephens had a net  
21 worth of \$51,346,834; (iv) the September 20, 2008 financial statement given to Fiechter on January  
22 20, 2009 as referenced in Paragraph 19 above that Wescott and Stephens had a net worth of  
23 \$62,675,831; and, (v) the August 20, 2009 financial statement as referenced above in Paragraph 23  
24 above that Wescott and Stephens had a net worth of \$76,559,891.

25 34. Fiechter is informed and believes, and thereon alleges, that each of the five financial  
26 statements are materially false, and were materially false when made, in overstating the value of  
27 assets, not disclosing liabilities (actual and contingent) attributable to listed assets and otherwise  
28

1 materially inflated the purported net worth of Wescott and Stephens at the time the financial  
2 statements were given to Fiechter.

3 35. The Debtors knew that the financial statements were false and inflated when made,  
4 and further knew that Fiechter accepted the statements as true and made with honest intent, and  
5 further knew that Fiechter relied on the statements in making loans and extending payment dates  
6 as stated herein.

7 36. Fiechter reasonably relied on the financial statements in making the February 25, 2008  
8 loan, consolidating the February 2008 Note with the March 2007 Note balance in the Consolidated  
9 Note and in extending the payment date of the Consolidated Note indefinitely after July 15, 2008.

10 37. The debt owed to Fiechter on account of the Consolidated Note is \$564,516 principal,  
11 and unpaid interest in the amount of \$186,490 at the legal rate of 10%.

12 38. The Debtors obtained the debt owed on account of the Consolidated Note, and  
13 extensions, renewal and refinancing as alleged above, by making materially false written statements  
14 concerning their financial condition, made with the intent to deceive, on which Fiechter reasonably  
15 relied in making the loans, extensions, renewals and refinancing as alleged above, making the  
16 Debtors' indebtedness on the Consolidated Note non-dischargeable in bankruptcy pursuant to 11  
17 U.S.C. §523(a)(2)(B).

18  
19 **SECOND CLAIM FOR RELIEF**  
20 **11 U.S.C. § 523 (a) (2)(B) and (a)(4)**  
21 **(For Fraud While Acting in a Fiduciary Capacity, Embezzlement,**  
22 **and Obtaining Money By Materially False**  
23 **Statements in Writing - The Florida Profit Split)**

24 39. By this reference, Fiechter incorporates the allegations of Paragraphs 1 - 38 above as  
25 though fully stated herein.

26 40. At all times mentioned herein, Wescott acted as a real estate broker in arranging for  
27 the loan transaction to the Florida developer as alleged above in Paragraph 13 and at all times  
28 mentioned therein was a fiduciary of Fiechter by reason of his real estate broker status and by  
further reason of his complete control of the funds advanced by Fiechter and receipt of the

1 repayment from the Florida developer of principal and excess funds to be split 50/50 by Fiechter  
2 and Wescott.

3 41. Wescott breached his fiduciary duty to Fiechter by willfully and maliciously ignoring  
4 his agreement with Fiechter when payment was made by the Florida developer, by spending  
5 \$55,000 of the Florida Profit Split attributable and distributable to Fiechter without Fiechter's  
6 knowledge, consent or agreement.

7 42. Wescott was permitted by Fiechter and entrusted to directly receive payment from  
8 the Florida developer and then divide payment of such funds to Fiechter and Wescott pursuant to  
9 their agreement whereby Fiechter would first receive the principal amount advanced and then split  
10 profits 50/50. Instead of splitting the money in his possession and control in accordance with the  
11 agreement, Wescott embezzled and took an excess profit share of \$55,000 for his own account and  
12 failed to pay Fiechter his full profit share.

13 43. The excess profit share of \$55,000 was obtained by means of a breach of fiduciary duty  
14 and embezzlement for the benefit of both Wescott and Stephens as their community property, and  
15 has not been repaid to Fiechter.

16 44. Wescott, and Stephens as her community property, obtained an extension of the  
17 payment date of the Florida Profit Share, by means of the materially false financial statements as  
18 stated in Paragraphs 33, 34 and 35 above, and Fiechter consented to receiving payment with  
19 payment of the Consolidated Note relying on the truthfulness and accuracy of the financial  
20 statements.

21 45. The Debtors took Fiechter's Florida Profit Share of \$55,000 by means of fraud and  
22 intentional acts while Wescott was acting as a fiduciary, and by further means of embezzlement of  
23 funds entrusted to Wescott for distribution to Fiechter; and Debtors obtained extensions, renewals  
24 and refinancing of the Florida Profit Share payable to Fiechter by making materially false written  
25 statements concerning their financial condition, made with the intent to deceive, on which Fiechter  
26 reasonably relied as alleged above, making the Debtors' indebtedness to Fiechter on the Florida  
27 Profit Share non-dischargeable in bankruptcy pursuant to 11 U.S.C. §§523(a)(2)(B) and 523(a)(4).  
28

**THIRD CLAIM FOR RELIEF**  
**11 U.S.C. § 523 (a) (2)(B) and (a)(4)**  
**(For Fraud While Acting in a Fiduciary Capacity, Embezzlement, and**  
**Obtaining Money By Materially False Statements in Writing - Glen Court Note)**

46. By this reference, Fiechter incorporates the allegations of Paragraphs 1 - 45 above as though fully stated herein.

47. On or about January 27, 2009, with Wescott acting as his real estate broker, fiduciary and advisor, Fiechter transferred ownership of 162 Glen Court to Wescott without any cash compensation and in exchange for an unsecured Promissory Note payable in one year in the principal amount of \$1,050,000 with the promise that if financing was obtained by Wescott that the proceeds would be shared with 25% going to reduce the Glen Court Note.

48. Fiechter transferred ownership of 162 Glen Court in direct reliance on the representation of Wescott that the transfer was in the best interests of Fiechter and was the best real estate strategy to maximize Fiechter's income from the property instead of Fiechter selling, listing, renting or simply holding the property for future sale. In agreeing to the real estate strategy devised by Wescott, Fiechter relied on Wescott as a licensed real estate broker and as his fiduciary, and further relied on the materially false written financial statements of Wescott, including, but not limited to, the September 30, 2008 financial statement given to him by Wescott on or about January 20, 2009 which showed that Wescott and Stephens had a total net worth of over \$62 million.

49. Wescott obtained a hard-money loan for \$600,000 in April 2009 secured by 162 Glen Court and retained approximately \$450,000 of the funds. Fiechter was paid \$140,134 from the loan proceeds, but never received anything further on account of transferring 162 Glen Court to Wescott and Wescott eventually lost the property when he defaulted on the loan either by foreclosure or a transfer to the hard-money lender in lieu of foreclosure.

50. By means of the "real estate strategy" devised by Wescott, Wescott was able to obtain real property as a fiduciary of Fiechter at no cost, obtain borrowed funds of approximately \$450,000, and allowed the property entrusted to him by Fiechter to be lost to foreclosure without repayment of the Glen Court Note and without payment even of the \$450,000 loan proceeds received by Wescott. By obtaining possession and ownership of 162 Glen Court in the manner

1 devised by Wescott, Wescott embezzled the ownership from Fiechter and converted the value of  
2 162 Glen Court for his own benefit and to the detriment of Fiechter and at no cost to Wescott.

3 51. The Debtors took Fiechter's 162 Glen Court property by means of fraud while acting  
4 in a fiduciary capacity and by means of embezzlement, and converted the use of the property for  
5 their own purposes and obtained financing proceeds of approximately \$450,000 at not cost, and did  
6 so by making materially false written statements concerning their financial condition, made with  
7 the intent to deceive, on which Fiechter reasonably relied as alleged above, making the Debtors'  
8 indebtedness to Fiechter on the Glen Court Note non-dischargeable in bankruptcy pursuant to 11  
9 U.S.C. §§523(a)(4) and 523(a)(2)(B).

10  
11 **WHEREFORE**, Frederick C. Fiechter requests judgment under the above counts as follows  
12 that:

- 13  
14 1. The debt of \$564,516 pursuant to a Promissory Note dated May 7, 2008 (the  
15 Consolidated Note) with accrued interest at the legal rate of 10% through the  
16 date of this complaint of \$186,490, and interest thereafter at the legal rate, is  
17 non-dischargeable, and that Plaintiff Fiechter have judgment in said amount  
18 against Defendants.
- 19 2. The debt of \$55,000 for Plaintiff's profit share from a joint venture loan  
20 retained by Wescott on or about September 2, 2008 with accrued interest  
21 through the date of this complaint of \$19,954, and interest thereafter at the  
22 legal rate, is non-dischargeable, and that Plaintiff Fiechter have judgment in  
23 said amount against Defendants.
- 24 3. The debt of \$1,305,058, plus interest at the legal rate of 10% from August 26,  
25 2011 (the date judgment was entered in The Superior Court of California in  
26 and for San Francisco) of \$84,739 on account of the Glen Court Note is non-  
27 dischargeable, and that Plaintiff Fiechter have judgment in said amount against  
28 Defendants.

- 1           4. Reasonable attorneys fees incurred by Plaintiff Fiechter in the enforcement
- 2           and collection of sums due and owing pursuant to the Consolidated Note and
- 3           the Glen Court Note be awarded to Plaintiff.
- 4           5. Such other and further relief as is just and appropriate, including reasonable
- 5           costs incurred herein be ordered.
- 6

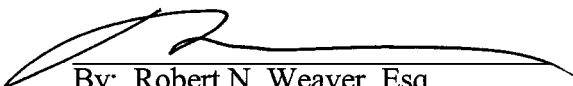
7   Dated: April 19, 2012

8                               LESS & WEAVER

9                               GUY KORNBLUM & ASSOCIATES

10

11

12                               

13                               By: Robert N. Weaver, Esq.

14                               Attorneys for Frederick Charles Fiechter

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# Exhibit D

MacCONAGHY & BARNIER, PLC  
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Attorneys for Plaintiff,  
JANINA M. HOSKINS

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re	)	Case No. 12-30143 DM
	)	
CARL ALEXANDER WESCOTT AND	)	(Chapter 7)
MONETTE ROSEMARIE STEPHENS,	)	
	)	A.P. No. _____
	)	
Debtors.	)	<b>COMPLAINT TO AVOID AND RECOVER</b>
	)	<b>FRAUDULENT TRANSFERS</b>

JANINA M. HOSKINS, TRUSTEE IN	)
BANKRUPTCY OF THE ESTATE OF	)
CARL ALEXANDER WESCOTT AND	)
MONETTE ROSEMARIE STEPHENS,	)
	)
Plaintiff,	)
	)
v.	)
	)
POOK SNOOK DOOK LIMITED	)
PARTNERSHIP, a purported limited	)
partnership; CARL A. WESCOTT and	)
MONETTE R. STEPHENS, as Trustees of	)
the WESCOTT-STEPHENS FAMILY	)
TRUST aka POOK SNOOK DOOK	)
TRUST; LODMELL & LODMELL, P.C., a	)
Professional corporation;	)
	)
Defendants.	)

///



1 Plaintiff alleges:

2 JURISDICTION AND VENUE

3 1. On January 17, 2012, Debtors Carl Alexander Wescott and Monette Rosemarie  
4 Stephens filed their joint Voluntary Petition for Relief under Chapter 7 of the Bankruptcy Code  
5 in the above-entitled Court. Thereafter, Janina M. Hoskins was duly appointed as Chapter 7  
6 Trustee in Bankruptcy therein.

7 2. The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C.  
8 §§ 157, 1334 and 11 U.S.C. § 548. This matter is a “core proceeding” as defined by 28 U.S.C. §  
9 157(b)(2)(A), (H), and (O) . Alternatively, Plaintiff consents to final judgment of the Bankruptcy  
10 Court pursuant to the provision of 28 U.S.C. § 157(c)(2). Venue is proper here pursuant to the  
11 provisions of 28 U.S.C. § 1409.

12 PARTIES

13 3. Plaintiff Janina M. Hoskins is the duly appointed Chapter 7 Trustee of the Estate  
14 of Carl Alexander Wescott and Monette Rosemarie Stephens. Plaintiff does not have personal  
15 knowledge of the facts alleged in this Complaint that arose prior to her appointment, and  
16 therefore alleges all of those facts on information and belief. Plaintiff reserves her right to amend  
17 this Complaint to allege additional claims against Defendants which may be discovered by her  
18 ongoing investigation.

19 4. Defendant Pook Snook Dook Limited Partnership is a purported limited  
20 partnership allegedly organized under the laws of the State of Arizona, and at all relevant times  
21 under the control of the Debtors and doing business in the State of California.

22 5. Defendants Carl A. Wescott and Monette R. Stephens are the purported Trustees of  
23 the Wescott-Stephens Family Trust also known as the Pook Snook Dook Trust, dated June 5,  
24 2010, and are sued herein in that capacity.

25 6. Plaintiff is informed and believes and on that basis alleges that Defendant Lodmell  
26 & Lodmell, P.C., is a professional corporation organized and existing under the laws of the State

1 of Arizona and engaged in the practice of law, specifically purporting to be "...the nation's leading  
2 legal asset protection lawyers...". Plaintiff is further informed and believes and on that basis  
3 alleges that, notwithstanding the fact that no attorney at Defendant Lodmell & Lodmell P.C. is  
4 licensed to practice law in the State of California, Defendant Lodmell & Lodmell P.C.  
5 aggressively solicits clients throughout the United States, including California, through a  
6 sophisticated internet marketing scheme, regularly represents clients in the State of California, and  
7 engages in the unauthorized practice of law in the State of California in that connection.

#### 8 GENERAL ALLEGATIONS

9 7. Commencing no later than 2005, the Debtors engaged in the business of promoting  
10 and syndicating various speculative, high-risk, and fraudulent real estate investment schemes.  
11 These included extensive highly leveraged land holdings in areas of the North Coast region of  
12 California -and flawed land development schemes in Uruguay, Honduras, and Ecuador, all still  
13 under investigation by the Plaintiff.

14 8. Virtually all of these investment schemes collapsed, leaving unpaid creditors  
15 holding claims against the Debtors in excess of \$40,000,000 as of the filing of the petition for  
16 relief.

17 9. Plaintiff is informed and believes and on that basis alleges that the Debtors used a  
18 substantial portion of the investor proceeds they raised to make personal investments and maintain  
19 a lavish personal lifestyle, including purchases of premium sports tickets, luxury travel,  
20 expensive jewelry, and artwork, all of which has allegedly disappeared.

21 10. Plaintiff is further informed and believes and on that basis alleges that no later than  
22 the year 2009, it became apparent to the Debtors that the likely value of their assets was greatly  
23 exceeded by the expected amount of their liabilities, and that they would be subject to numerous  
24 legitimate 7 and 8 figure claims from defrauded investors and other bona fide creditors.

25 11. Rather than make a good faith effort to liquidate or reorganize their assets for the  
26 benefit of their legitimate creditors, the Debtors embarked on a fraudulent scheme to shield assets

1 from legitimate creditor claims through a series of bogus transfers and shell entities, concocted in  
2 part by the Defendant Lodmell & Lodmell, P.C., who solicited the Debtors in California through  
3 slick internet advertising.

4 12. On or about February 13, 2010, the Debtors executed a document entitled  
5 “Transmutation Agreement of Carl Wescott and Monette Stephens” in which they purported to  
6 convert all of their community property into the separate property of one spouse or the other,  
7 pursuant to the laws of the State of California.

8 13. On or about June 5, 2010, the Debtors executed a document prepared by Defendant  
9 Lodmell & Lodmell, P.C. entitled “Revocable Living Trust” whereby they purported to convey all  
10 of their respective assets into the Wescott-Stephens Family Trust and to re-characterize all such  
11 assets as community property, pursuant to the laws of the State of California. Plaintiff is informed  
12 and believes and on that basis alleges that at some time after June 5, 2010, this Trust was amended,  
13 *inter alia*, to change its name to the Pook Dook Snook Trust.

14 14. Also on or about June 5, 2010, the Debtors, with the assistance and advice of  
15 Defendant Lodmell & Lodmell, P.C., purported to organize Defendant Pook Snook Dook Limited  
16 Partnership, “an Arizona Asset Management Limited Partnership”. Initially the Debtors named  
17 themselves as general partners and named the Wescott-Stephens Family Trust as the “primary  
18 beneficiary” of that entity.

19 15. On our about September 10, 2010, with the assistance and advice of Defendant  
20 Lodmell & Lodmell, P.C., the Debtors conveyed various valuable assets to Defendant Pook Snook  
21 Dook Limited Partnership, including assets previously conveyed to themselves as Trustees of the  
22 Wescott-Stephens Family Trust. On April 11, 2011, again with the assistance and advice of  
23 Defendant Lodmell & Lodmell, P.C., the Debtors further concealed their beneficial interest in these  
24 assets by amending the certificate of limited partnership of Pook Dook Snook Limited Partnership  
25 to name a shell Nevada limited liability company, Ivy League Charters, LLC, as the new general  
26 partner and the Pook Snook Dook Trust as the 97% limited partner.

FIRST CLAIM FOR RELIEF

(Avoidance of Actual Fraudulent Transfer – 11 U.S.C. § 548(a)(1)(A))  
(Against All Defendants Except Lodmell & Lodmell, P.C.)

16. Plaintiff realleges and incorporate the allegations contained in Paragraphs 1 through 15, inclusive.

17. On or about September 4, 2010, a date within two years before the petition date, the Debtors voluntarily transferred various valuable assets to Defendant Pook Snook Dook Limited Partnership and/or the Wescott-Stephens Family Trust, including without limitation the assets shown on the attached Exhibits 1 & 2.

18. The Debtors made these transfers with the actual intent to hinder, delay or defraud their then-existing and future creditors.

19. The Debtors' actual fraudulent intent is inferred from the presence of a number of the so-called "badges of fraud". These include the facts that (a) Defendant Pook Snook Dook Limited Partnership is wholly owned beneficially by the Debtors, (b) the Debtors were being pursued by a number of creditors at the time of the transfers, (c) the Debtors make the transfers as part of an admitted "asset protection" scheme, (d) the Debtors were insolvent at the time of the transfers, (e) the Debtors concocted various layers of shell entities to conceal their beneficial ownership in the Pook Snook Dook entity, including registering a shell, defunct Nevada corporation as the general partner, and (f) there was wholly inadequate consideration for the transfers.

20. Plaintiff is therefore entitled to have these transfers avoided pursuant to the provisions of 11 U.S.C. § 548(a)(1)(A), and preserved for the benefit of the Estate pursuant to 11 U.S.C. § 551.

WHEREFORE, Plaintiff prays for judgment as set forth below.

///

///

///

SECOND CLAIM FOR RELIEF

(Avoidance of Constructively Fraudulent Transfer – 11 U.S.C. § 548(a)(1)(B))  
(Against All Defendants Except Lodmell & Lodmell, P.C.)

21. Plaintiff realleges and incorporate the allegations contained in Paragraphs 1 through 20, inclusive.

22. On or about September 4, 2010, a date within two years before the petition date, the Debtors voluntarily transferred various valuable assets to Defendant Pook Snook Dook Limited Partnership and/or the Wescott-Stephens Family Trust, including without limitation the assets shown on the attached Exhibit 1.

23. The Debtors received less than a reasonably equivalent value in exchange for these transfers.

24. The Debtors were insolvent at the time of these transfers, or were rendered insolvent as a result of these transfers.

25. At the time of these transfers, the Debtors were engaged in business or a transaction, or were about to engage in business or a transaction, for which any property remaining with the Debtors was an unreasonably small capital.

26. At the time of these transfers, the Debtors intended to incur, or believed that they would incur, debts that would be beyond the Debtors' ability to pay as such debts matured.

27. Plaintiff is therefore entitled to have this transfer avoided pursuant to the provisions of 11 U.S.C. § 548(a)(1)(B), and preserved for the benefit of the Estate pursuant to 11 U.S.C. § 551.

WHEREFORE, Plaintiff prays for judgment as set forth below.

THIRD CLAIM FOR RELIEF

(Avoidance of Actual Fraudulent Transfer – 11 U.S.C. § 548(a)(1)(A))  
(Against Defendant Lodmell & Lodmell, P.C.)

28. Plaintiff realleges and incorporate the allegations contained in Paragraphs 1 through 27, inclusive.

29. Plaintiff is informed and believes and on that basis alleges that sometime after

1 January 17, 2010, a date within two years before the petition date, the Debtors voluntarily  
2 transferred to Defendant Lodmell & Lodmell, P.C., a sum in excess of \$20,000.00.

3 30. The Debtors made this transfer with the actual intent to hinder, delay or defraud  
4 their then-existing and future creditors, and specifically to perpetrate their unlawful debt  
5 avoidance scheme as alleged herein.

6 31. The Debtors' actual fraudulent intent is inferred from the presence of a number of  
7 the so-called "badges of fraud". These include the facts that (a) the Debtors were being pursued by  
8 a number of creditors at the time of the transfer, (c) the Debtors make this transfer as part of an  
9 admitted "asset protection" scheme, (d) the Debtors were insolvent at the time of the transfer, and  
10 (e) there was wholly inadequate consideration for the transfer.

11 32. Plaintiff is therefore entitled to have this transfer avoided pursuant to the  
12 provisions of 11 U.S.C. § 548(a)(1)(A), and preserved for the benefit of the Estate pursuant to 11  
13 U.S.C. § 551.

14 WHEREFORE, Plaintiff prays for judgment as set forth below.

15  
16 FOURTH CLAIM FOR RELIEF

17 (Avoidance of Constructively Fraudulent Transfer – 11 U.S.C. § 548(a)(1)(B))  
18 (Against Defendant Lodmell & Lodmell, P.C.)

19 33. Plaintiff realleges and incorporate the allegations contained in Paragraphs 1  
20 through 32, inclusive.

21 34. Plaintiff is informed and believes and on that basis alleges that sometime after  
22 January 17, 2010, a date within two years before the petition date, the Debtors voluntarily  
23 transferred to Defendant Lodmell & Lodmell, P.C., sums in excess of \$20,000.00.

24 35. The Debtors received less than a reasonably equivalent value in exchange for this  
25 transfers. Specifically, the Debtors paid these monies for purported legal services, which legal  
26 services constituted (1) the unauthorized practice of law in the State of California and (2) advice  
and assistance to the Debtors in the commission of a crime; to wit, a violation of California Penal

1 Code Section 531.

2 36. The Debtors were insolvent at the time of this transfer.

3 37. At the time of this transfer, the Debtors were engaged in business or a transaction,  
4 or were about to engage in business or a transaction, for which any property remaining with the  
5 Debtors was an unreasonably small capital.

6 38. At the time of this transfers, the Debtors intended to incur, or believed that they  
7 would incur, debts that would be beyond the Debtors' ability to pay as such debts matured.

8 39. Plaintiff is therefore entitled to have this transfer avoided pursuant to the  
9 provisions of 11 U.S.C. § 548(a)(1)(B), and preserved for the benefit of the Estate pursuant to 11  
10 U.S.C. § 551.

11 WHEREFORE, Plaintiff prays for judgment as set forth below.

12 FIFTH CLAIM FOR RELIEF  
13 (Avoidance of Actual Fraudulent Transfer – 11 U.S.C. § 544)  
(Against Defendant Lodmell & Lodmell, P.C.)

14 40. Plaintiff realleges and incorporate the allegations contained in Paragraphs 1  
15 through 38, inclusive.

16 41. Among the rights and powers of Plaintiff as the duly appointed Trustee in  
17 Bankruptcy of the Debtors are all of the avoidance rights of actual creditors of the Debtors existing  
18 as of the filing of the petition for relief and all of the rights and powers of hypothetical execution  
19 and judgment lien creditors of the Debtors as of the filing of the petition for relief.

20 42. Plaintiff is informed and believes and on that basis alleges that sometime after  
21 January 17, 2010, a date within two years before the petition date, the Debtors voluntarily  
22 transferred to Defendant Lodmell & Lodmell, P.C., a sum in excess of \$20,000.00.

23 43. The Debtors made this transfers with the actual intent to hinder, delay or defraud  
24 their then-existing and future creditors, and specifically to perpetrate their unlawful debt avoidance  
25 scheme as alleged herein.

26 44. The Debtors' actual fraudulent intent is inferred from the presence of a number of

1 the so-called “badges of fraud”. These include the facts that (a) the Debtors were being pursued by  
2 a number of creditors at the time of the transfer, (c) the Debtors make this transfer as part of an  
3 admitted “asset protection” scheme, (d) the Debtors were insolvent at the time of the transfer, and  
4 (e) there was wholly inadequate consideration for the transfer.

5 45. Defendant Lodmell & Lodmell, P.C. acted wilfully, fraudulently, and maliciously in  
6 counseling the Debtors regarding this transfer and in encouraging the Debtors to enact this  
7 fraudulent “asset protection” scheme. Among other things, Defendant Lodmell & Lodmell  
8 engaged in the unauthorized practice of law in the State of California and counseled the Debtors  
9 in the commission of a crime; to wit, a violation of California Penal Code Section 531.

10 46. There exist actual and hypothetical lien creditors with the rights and powers under  
11 the laws of the State of California to avoid this transfer and to recover exemplary and punitive  
12 damages against Defendant Lodmell & Lodmell, P.C., pursuant to the provisions of California  
13 Civil Code Section 3294

14 47. Plaintiff is therefore entitled to have this transfers avoided pursuant to the  
15 provisions of 11 U.S.C. § 544, and preserved for the benefit of the Estate pursuant to 11 U.S.C. §  
16 551, and to recover punitive and exemplary damages according to proof.

17 PRAYER FOR RELIEF

18 WHEREFORE, Plaintiff prays for judgment as follows:

19 1. For an order avoiding the transfers set forth in Exhibits 1 & 2, and preserving these  
20 transfers for the benefit of the Estate;

21 2. For an award of compensatory money damages against Defendant Lodmell &  
22 Lodmell, P.C., in the amount of not less than \$20,000.00, according to proof, plus interest thereon  
23 at the legal rate;

24 3. For an award of punitive and exemplary damages against Defendant Lodmell &  
25 Lodmell, P.C., according to proof;

26 4. For costs of suit incurred herein; and



1           5.       For such other and further relief as the Court deems proper.

2  
3       Dated: May 18 , 2012

MACCONAGHY & BARNIER, PLC

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5                               /s/ Jean Barnier  
6                               By: Jean Barnier  
7                               Attorneys for Plaintiff

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# **Exhibit E**

May 03, 2013

GLORIA L. FRANKLIN, CLERK  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

MacCONAGHY &amp; BARNIER, PLC

JOHN H. MacCONAGHY, State Bar No. 83684

JEAN BARNIER, State Bar No. 231683

645 First Street West, Suite D

Sonoma, CA 95476

Telephone: (707) 935-3205

Email: jbarrier@macbarlaw.com

Signed and Filed: May 2, 2013

DENNIS MONTALI  
U.S. Bankruptcy Judge

Attorneys for Plaintiff,

Janina M. Hoskins, Trustee in Bankruptcy

## UNITED STATES BANKRUPTCY COURT

## NORTHERN DISTRICT OF CALIFORNIA

In re

CARL ALEXANDER WESCOTT and  
MONETTE ROSEMARIE STEPHENS,

Debtors.

Case No.: 12-30143 DM  
(Chapter 7)

AP No. 12-3148

**ORDER GRANTING SUMMARY  
JUDGMENT**JANINA M. HOSKINS, Trustee in  
Bankruptcy of the Estate of Carl Alexander  
Wescott and Monette Rosemarie Stephens,

Plaintiff,

v.

CARL ALEXANDER WESCOTT and  
MONETTE ROSEMARIE STEPHENS,

Defendants.

The Trustee's Motion for Summary Judgment to Deny Discharge of the Debtors came on for hearing on April 26, 2013 before the Hon. Dennis Montali, United States Bankruptcy Judge. Jean Barnier of MacConaghy & Barnier, PLC appeared for the Trustee; Sheila Gropper Nelson, Esq. appeared for Monette Rosemarie Stephens. Carl Alexander Wescott, pro per, did not appear. On consideration of the oral and written arguments of counsel, and the Court having set forth the basis for its decision on the record, in particular that no material facts are in dispute as to the claims for relief which are subject to the motion, and good cause appearing:

IT IS HEREBY ORDERED that the Motion is granted.

\*\*END OF ORDER\*\*

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APPROVED AS TO FORM:

/s/ Sheila Gropper Nelson  
Sheila Gropper Nelson  
Attorney for Monette Rosemarie Stephens

Dated: May 1, 2013

COURT SERVICE LIST

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# **Exhibit F**

Entered on Docket

May 03, 2013

GLORIA L. FRANKLIN, CLERK  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA



MacCONAGHY & BARNIER, PLC

JOHN H. MacCONAGHY, State Bar No. 83684

JEAN BARNIER, State Bar No. 231683

645 First Street West, Suite D

Sonoma, CA 95476

Telephone: (707) 935-3205

Email: jbarrier@macbarlaw.com

Signed and Filed: May 2, 2013

*Dennis Montali*

DENNIS MONTALI

U.S. Bankruptcy Judge

Attorneys for Plaintiff,

Janina M. Hoskins, Trustee in Bankruptcy

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re

CARL ALEXANDER WESCOTT and  
MONETTE ROSEMARIE STEPHENS,

Debtors.

Case No.: 12-30143 DM  
(Chapter 7)

AP No. 12-3148

**JUDGMENT DENYING DISCHARGE  
OF DEBTORS**

JANINA M. HOSKINS, Trustee in  
Bankruptcy of the Estate of Carl Alexander  
Wescott and Monette Rosemarie Stephens,

Plaintiff,

v.

CARL ALEXANDER WESCOTT and  
MONETTE ROSEMARIE STEPHENS,

Defendants.

The Court having granted the Trustee's Motion for Summary Judgment to Deny  
Discharge of the Debtors and good cause appearing:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the discharge of Carl  
Alexander Wescott and the discharge of Monette Rosemarie Stephens are denied pursuant to the  
provisions of 11 U.S.C. § 727(a).

**\*\*END OF ORDER\*\***

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APPROVED AS TO FORM:

/s/ Sheila Gropper Nelson  
Sheila Gropper Nelson  
Attorney for Monette Rosemarie Stephens

Dated: May 1, 2013



Entered on Docket

July 18, 2013

GLORIA L. FRANKLIN, CLERK  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA



1 Sheila Gropper Nelson, S.B.N. 85031

2 Law Office of Sheila Gropper Nelson Signed and Filed: July 17, 2013

3 55 Francisco St., Suite 600

4 San Francisco, CA 94133

5 Telephone: (415) 362-2221

6 Facsimile: (415) 576-1422

7 Email: SheDoesBkLaw@aol.com

8 Attorney for Monette Rosemarie Stephens  
9 DENNIS MONTALI  
10 U.S. Bankruptcy Judge

*Dennis Montali*  
\_\_\_\_\_  
DENNIS MONTALI  
U.S. Bankruptcy Judge

11  
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13 IN THE UNITED STATES BANKRUPTCY COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15 (San Francisco Division)

16 Chapter 7

17 In re:

Bankruptcy Case No. 12-30143

18 Carl Alexander Wescott &

APN 12-03148

19 Monette Rosemarie Stephens

Order Granting Stephens' Motion to

20 Debtors \_\_\_\_\_/

Vacate Entry of Order Denying Stephens'

21 JANINA M. HOSKINS, TRUSTEE IN

Discharge Pursuant to FRCP 59 et seq.

22 BANKRUPTCY OF THE ESTATE OF

23 CARL ALEXANDER WESCOTT &

Date: July 12, 2013

24 MONETTE ROSEMARIE STEPHENS,

Time: 10:00 a.m.

25 Plaintiff,

Dept.: 22<sup>nd</sup> Floor

26 v.

27 CARL ALEXANDER WESCOTT &

28 MONETTE ROSEMARIE STEPHENS,

Defendants \_\_\_\_\_/

Debtor/defendant Monette Rosemarie Stephens' Motion to Vacate Entry of Order  
Denying her Discharge came on for hearing as being duly noticed, before the Honorable  
Dennis Montali, presiding.

Appearances were as stated on the record.

12-30143/12-03148/Order Granting Motion to Vacate

Page 1 of 2

1 The Court having reviewed all of the pleadings, papers and evidence submitted and  
2 oral argument as presented and for good cause shown

3 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

- 4 1. The Motion to Vacate the Judgment to Deny Monette Stephens' Discharge is  
5 Granted for all of the reasons stated by the Court on the record.  
6 2. Adversary Action APN 13-0148 is reinstated to the rolls.  
7 3. A trial date of October 2, 2013 is set.

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10 \*\* End of Order \*\*

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13 Approved as to form:

14

15 By: /s/ Jean Barnier

16 Jean Barnier, Esq.  
17 MacConaghy & Barnier  
18 Attorneys for Janina M. Hoskins,  
19 Trustee in Bankruptcy of the Estate of  
20 Carl Alexander Wescott &  
21 Monette Rosemarie Stephens

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12-30143/12-03148/Order Granting Motion to Vacate

Page 2 of 2

# Exhibit G

MC-053

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): <b>JAMES ROBERTS, SBN 98804/SHARMI SHAH, SBN 233110</b> <b>ROBERTS &amp; ELLIOTT, LLP</b> 150 Almaden Boulevard Suite 950 San Jose, CA 95113 TELEPHONE NO.: (408) 275-9800 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): <b>C. Wescott, M. Stephens, Pook Snook Dook LP</b>	FOR COURT USE ONLY  <div style="text-align: center;"><b>FILED</b></div> San Francisco County Superior Court  JUN 18 2013  CLERK OF THE COURT BY: <u><i>Deputy Clerk</i></u> Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF <b>SAN FRANCISCO</b> STREET ADDRESS: <b>400 McAllister Street, Room 103</b> MAILING ADDRESS: CITY AND ZIP CODE: <b>San Francisco, CA 94102</b> BRANCH NAME:	CASE NUMBER: <b>CGC 10-496091</b>
CASE NAME: <b>Fiechter v. Carl Wescott, et. al.</b>	HEARING DATE: <b>June 18, 2013</b> DEPT.: <b>302</b> TIME: <b>9:30 A.M.</b> BEFORE HON.: <b>Marla J. Miller</b> DATE ACTION FILED: <b>January 15, 2010</b> TRIAL DATE: <b>Not Set</b>
<div style="text-align: center;"><b>ORDER GRANTING ATTORNEY'S MOTION TO BE RELIEVED AS COUNSEL—CIVIL</b></div>	

1. The motion of (name of attorney): **James Roberts, Sharmi Shah, Roberts & Elliott, LLP** to be relieved as counsel of record for (name of client): **Carl Wescott and Pook Snook Dook, LP** a party to this action or proceeding, came on regularly for hearing at the date, time, and place indicated above.

2. The following persons were present at the hearing:

### FINDINGS

3. Attorney has
- ☐ personally served the client with papers in support of this motion.
  - ☒ served client by mail and submitted a declaration establishing that the service requirements of California Rules of Court, rule 3.1362, have been satisfied.
4. Attorney has shown sufficient reasons why the motion to be relieved as counsel should be granted and why the attorney has brought a motion under Code of Civil Procedure section 284(2) instead of filing a consent under section 284(1).

### ORDER

5. Attorney is relieved as counsel of record for client
- ☒ effective upon the filing of the proof of service of this signed order upon the client.
  - ☐ effective on (specify date):

6. The client's ☐ current ☒ last known address and telephone number:

As to Carl Wescott - San Pedro Sula, Honduras and c@carlwescott.com

~~As to Pook Snook Dook LP - c/o Lodmell & Lodmell, P.C., 1631 E. Greery Lynn Rd., Phoenix, AZ 85016~~

If the client's current address is known, service on the client must hereafter be made at that address unless otherwise ordered in item 13. If the current address is not known, service must be made according to Code of Civil Procedure section 1011 (b) and rule 3.252 of the California Rules of Court.

7. a. The next scheduled hearing in this action or proceeding is set for (date, time, and place):  
**September 25, 2013 at 10:30 AM in Department 610**
- b. The hearing will concern (subject matter):  
**Case Management**

### NOTICE TO CLIENT

You or your new attorney, if any, must prepare for and attend this hearing.

Page 1 of 2

MC-053

CASE NAME: Fiechter v. Carl Wescott, et. al.	CASE NUMBER: CGC 10-496091
---	-------------------------------

8. The following additional hearings and other proceedings (including discovery matters) are set in this action (*describe the date, time, place, and subject matter of each*):

9. The trial in this action or proceeding:

- a. ☒ is not yet set.  
b. ☐ is set for (*specify date, time, and place*):

10. Client is hereby notified of the following effects this order may have upon parties.

#### NOTICE TO CLIENT

Your present attorney will no longer be representing you. You may not in most cases represent yourself if you are one of the parties on the following list:

- A guardian
- A conservator
- A trustee
- A personal representative
- A probate fiduciary
- A corporation
- A guardian ad litem
- An unincorporated association

If you are one of these parties, YOU SHOULD IMMEDIATELY

if you are one of these parties, YOU SHOULD IMMEDIATELY

# Exhibit H

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO**

400 MCALLISTER STREET, SAN FRANCISCO, CA 94102-4514

FREDERICK C FIECHTER

PLAINTIFF (S)

VS.

CARL WESCOTT et al

DEFENDANT (S)

**Case Management Department 610  
Case Management Order**

**NO. CGC-10-496091**

**Order Continuing Case  
Management Conference**

TO: ALL COUNSEL AND SELF-REPRESENTED LITIGANTS

The Sep-25-2013 CASE MANAGEMENT CONFERENCE is canceled, and it is hereby ordered:

This case is set for a case management conference on Nov-27-2013 in Department 610 at 10:30 am for status report re bankruptcy.

CRC 3.725 requires the filing and service of a case management statement form CM-110 no later than fifteen (15) days before the case management conference. However, it would facilitate the issuance of a case management order without an appearance at the case management conference if the case management statement is filed, served and lodged in Department 610 twenty-five (25) days before the case management conference.

PLAINTIFF(S) must serve a copy of this notice on all parties not listed on the attached proof of service within five (5) days of the date of this order.

DATED: SEP-10-2013

CYNTHIA M. LEE

JUDGE OF THE SUPERIOR COURT

**CERTIFICATE OF SERVICE BY MAIL**

I, the undersigned, certify that I am an employee of the Superior Court of California, County of San Francisco and not a party to the above-entitled cause and that on SEP-10-2013 I served the attached Order Continuing Case Management Conference by placing a copy thereof in an envelope addressed to all parties to this action as listed below. I then placed the envelope in the outgoing mail at 400 McAllister Street, San Francisco, CA 94012, on the date indicated above for collection, sealing of the envelope, attachment of required prepaid postage, and mailing on that date, following standard court practice.

**Dated : SEP-10-2013**

**By: DARLENE LUM**

**GUY ORVILLE KORNBLUM (039974)  
GUY O KORNBLUM & ASSOCIATES  
1388 SUTTER ST, SUITE 820  
SAN FRANCISCO, CA 94109**

**DAVID M ZEFF (063289)  
LAW OFFICES OF DAVID M. ZEFF  
1388 SUTTER ST. STE. 820  
SAN FRANCISCO , CA 941090000**

**JAMES KENNETH ROBERTS (098804)  
150 ALMADEN BLVD, STE 950  
SAN JOSE, CA 95113**

**CARL A. WESCOTT  
SAN PEDRO SULA  
HONDURAS  
HONDURAS**

**AMERICAN CONTRACTORS INDEMNITY COMPANY  
9841 AIRPORT BLVD, 9TH FLOOR  
LOS ANGELES, CA 90045**

**MONETTE STEPHENS  
853 ASHBURY ST  
SAN FRANCISCO, CA 94117**

**POOK SNOOK DOOK LP  
C/O LODMELL & LODMELL, P.C.  
1631 E. CHEERY LYNN RD.  
PHOENIX, AZ 85016**



# Exhibit I

THE SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

Case Number: CGC10496091  
Title: FREDERICK C FIECHTER VS. CARL WESCOTT et al  
Cause of Action: CONTRACT/WARRANTY  
Generated: 2022-11-11 4:47 pm

Register of Actions Parties Attorneys Calendar Payments Documents

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After that, please refresh your web browser. (by pressing Command +R for Mac, pressing F5 for Windows or clicking the refresh button on your web browser)

## Register of Actions

Show 10 entries

Search:

Date	Proceedings	Document	Fee
2015-11-02	ABSTRACT OF JUDGMENT ISSUED TO PLAINTIFF FIECHTER, FREDERICK C		\$25.00
2015-07-27	NOTICE OF ENTRY OF JUDGMENT (TRANSACTION ID # 15207034)	<a href="#">View</a>	
2015-07-14	THE COURT ORDERED THE FOLLOWING JUDGMENT ENTERED: JUDGMENT FOR PLAINTIFF AND AGAINST DEFENDANT CARL WESCOTT, AKA CARL A. WESCOTT SEE SCANNED DOCUMENT	<a href="#">View</a>	
2015-07-14	COURT TRIAL ON JUL-27-2015 OFF CALENDAR - DEFAULT PROVE-UP HEARING HELD ON JUNE 29, 2015. COURT ORDERED DEFAULT JUDGMENT ENTERED IN FAVOR OF PLAINTIFF FREDERICK C. FIECHTER AND AGAINST DEFAULTED DEFENDANT CARL WESCOTT, AKA CARL A. WESCOTT. ORIGINAL SECURED PROMISSORY NOTE DATED MAY 7, 2008 IS CANCELLED AND RETURNED TO COUNSEL FOR PLAINTIFF FOR THE CARE AND CUSTODY OF THE COURT. PROCEEDINGS NOT REPORTED. (514)		
2015-07-01	DECLARATION IN SUPPORT OF JUDGMENT FOR PLAINTIFF AND AGAINST DEFT CARL WESCOTT AKA CARLA A. WESCOTT (TRANSACTION ID # 15181085) FILED BY PLAINTIFF FIECHTER, FREDERICK C	<a href="#">View</a>	
2015-07-01	REQUEST FOR JUDICIAL NOTICE (TRANSACTION ID # 15181069) FILED BY PLAINTIFF FIECHTER, FREDERICK C	<a href="#">View</a>	
2015-07-01	DECLARATION OF DAVID M. ZEFF IN SUPP OF ENTRY OF JUDGMENT (TRANSACTION ID # 15181069) FILED BY PLAINTIFF FIECHTER, FREDERICK C	<a href="#">View</a>	
2015-06-30	DISMISSAL WITHOUT PREJUDICE (TRANSACTION ID # 15180050) AS TO DEFENDANT DOES 1 TO 25	<a href="#">View</a>	
2015-06-29	COURT TRIAL SET FOR JUN-29-2015 CONTINUED TO JUL-27-2015 AT 9:00 AM IN 514, FOR DEFAULT PROVE UP AGAINST DEFAULTED DEFENDANT CARL WESCOTT. NEW HEARING WILL BE VACATED BY THE CLERK WHEN JUDGMENT IS SIGNED AND ENTERED AND ORIGINAL PROMISSORY NOTE IS CANCELLED AND VOID BY THE ENTRY OF JUDGMENT. PROCEEDINGS REPORTED BY: MITCH LYON, CSR#6840. (514)		
2015-06-29	MINI MINUTES FOR JUN-29-2015 09:45 AM FOR DEPT 514		

Showing 51 to 60 of 281 entries

Previous 1 ... 5 **6** 7 ... 29 Next

[Contact Us](#)

THE SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

Case Number: CGC10496091  
Title: FREDERICK C FIECHTER VS. CARL WESCOTT et al  
Cause of Action: CONTRACT/WARRANTY  
Generated: 2022-11-11 4:47 pm

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After that, please refresh your web browser. (by pressing Command +R for Mac, pressing F5 for Windows or clicking the refresh button on your web browser)

## Register of Actions

Show  entries

Search:

Date	Proceedings	Document	Fee
2015-06-29	COURT REPORTING SERVICES LESS THAN 1 HOUR FILED BY PLAINTIFF FIECHTER, FREDERICK C		\$30.00
2015-06-29	MASTER SHORT CAUSE CALENDAR OF JUN-29-2015 ASSIGNED TO COURT TRIAL CALENDAR ON JUN-29-2015 AT 9:45 AM IN DEPT. 514, JUDGE CHARLES CROMPTON, FOR DEFAULT PROVE-UP HEARING, ON THE COMPLAINT. THE CROSS-COMPLAINT IS DISMISSED FOR NON-APPEARANCE OF CROSS COMPLAINANT CARL WESCOTT AT TRIAL CALL. JUDGE: JOHN K. STEWART; CLERK: JIROQUE; COURT REPORTER: MATTER NOT REPORTED. (206)		
2015-03-20	REQUEST FOR ENTRY OF DEFAULT/DEFAULT ENTERED, DECLARATION OF NON-MILITARY STATUS (TRANSACTION ID # 15078024) AS TO DEFENDANT WESCOTT, CARL	<a href="#">View</a>	
2015-03-19	REQUEST FOR DEFAULT REJECTED, E-FILING REJECT, (TRANSACTION ID # 15077169) SUBMITTED BY PLAINTIFF FIECHTER, FREDERICK C AS TO DEFENDANT WESCOTT, CARL	<a href="#">View</a>	
2015-02-24	DISMISSAL WITHOUT PREJUDICE OF 3RD AMENDED COMPLAINT (TRANSACTION ID # 15054033) AS TO DEFENDANT POOK SNOOK DOOK LP	<a href="#">View</a>	
2015-02-24	DISMISSAL WITHOUT PREJUDICE OF 3RD AMENDED COMPLAINT (TRANSACTION ID # 15054033) AS TO DEFENDANT STEPHENS, MONETTE	<a href="#">View</a>	
2015-02-13	PROOF OF SERVICE OF SUMMONS ON THIRD AMENDED COMPLAINT (TRANSACTION ID # 56769531) FILED BY PLAINTIFF FIECHTER, FREDERICK C	<a href="#">View</a>	
2015-02-11	NOTICE OF TIME AND PLACE OF TRIAL, SHORT CAUSE TRIAL SET FOR JUN-29-2015 AT 9:30 AM IN DEPT. 206. CASE MANAGEMENT CONFERENCE ON FEB-25-2015 IS OFF CALENDAR. NOTICE SENT BY COURT.	<a href="#">View</a>	
2015-01-27	CASE MANAGEMENT STATEMENT (TRANSACTION ID # 15026014) FILED BY PLAINTIFF FIECHTER, FREDERICK C ESTIMATED TIME FOR TRIAL: 1.0 DAYS	<a href="#">View</a>	
2014-12-08	REQUEST TO ADVANCE CASE MANAGEMENT CONFERENCE AND/ OR SET MATTER FOR TRIAL (TRANSACTION ID # 14341207) FILED BY PLAINTIFF FIECHTER, FREDERICK C	<a href="#">View</a>	

Showing 61 to 70 of 281 entries

Previous 1 ... 6 **7** 8 ... 29 Next



**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO**

400 MCALLISTER STREET, SAN FRANCISCO, CA 94102-4514

FREDERICK C FIECHTER

PLAINTIFF (S)

VS.

CARL WESCOTT et al

DEFENDANT (S)

**Case Management Department 610  
Case Management Order**

**NO. CGC-10-496091**

**Notice of Time and Place of Trial**

TO: ALL COUNSEL AND SELF-REPRESENTED LITIGANTS

The Feb-25-2015 CASE MANAGEMENT CONFERENCE is canceled.

YOU ARE HEREBY NOTIFIED that this case is set for Short Cause TRIAL on Jun-29-2015 at 9:30 am in Department 206.

If any party objects to this order, written notice of the objection must be filed with the Court; a courtesy copy must be delivered to Department 610 and served on all parties; and all counsel must appear for an objection hearing on Feb-25-2015 in Department 610 at 10:30 am.

After Feb-25-2015, ALL REQUESTS FOR CONTINUANCE MUST BE SUBMITTED TO THE PRESIDING JUDGE in Department 206, 400 MCALLISTER STREET, SAN FRANCISCO, CA 94102-4514.

If an Interpreter has been requested, contact the Interpreter Coordinator at [InterpreterRequests@sfc.org](mailto:InterpreterRequests@sfc.org). If you do not have access to email please call 415-551-0654.

DATED: FEB-11-2015

JOHN K. STEWART

JUDGE OF THE SUPERIOR COURT

**CERTIFICATE OF SERVICE BY MAIL**

I, the undersigned, certify that I am an employee of the Superior Court of California, County of San Francisco and not a party to the above-entitled cause and that on FEB-11-2015 I served the attached Notice of Time and Place of Trial by placing a copy thereof in an envelope addressed to all parties to this action as listed below. I then placed the envelope in the outgoing mail at 400 McAllister Street, San Francisco, CA 94102, on the date indicated above for collection, sealing of the envelope, attachment of required prepaid postage, and mailing on that date, following standard court practice.

**Dated : FEB-11-2015**

**By: DARLENE LUM**

GUY ORVILLE KORNBLUM (039974)  
GUY O KORNBLUM & ASSOCIATES  
1388 SUTTER ST, SUITE 820  
SAN FRANCISCO, CA 94109

DAVID M ZEFF (063289)  
1100 LARKSPUR LANDING CIRCLE  
SUITE 200  
LARKSPUR, CA 94939

JAMES KENNETH ROBERTS (098804)  
150 ALMADEN BLVD, STE 950  
SAN JOSE, CA 95113

CARL A. WESCOTT  
SAN PEDRO SULA  
HONDURAS  
HONDURAS

AMERICAN CONTRACTORS INDEMNITY COMPANY  
601 S. FIGUEROA ST., STE 1600  
LOS ANGELES, CA 90017

MONETTE STEPHENS  
853 ASHBURY ST  
SAN FRANCISCO, CA 94117

POOK SNOOK DOOK LP  
C/O LODMELL & LODMELL, P.C.  
1631 E. CHEERY LYNN RD.  
PHOENIX, AZ 85016

CIV-100

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>David M. Zeff (Bar # 63289)</b> <b>Law Offices of David M. Zeff</b> <b>1100 Larkspur Landing Circle, Suite 200</b> <b>Larkspur, CA 94939</b> TELEPHONE NO: (415) 923-1380 FAX NO (Optional) (415) 923-1382 E-MAIL ADDRESS (Optional): dmz@zeflaw.com ATTORNEY FOR: <b>FREDERICK C. FIECHTER, Plaintiff</b>		FOR COURT USE ONLY  <b>DEFAULT ENTERED AS REQUESTED</b>  <b>ELECTRONICALLY FILED</b> <i>Superior Court of California, County of San Francisco</i> <b>03/20/2015</b> <b>Clerk of the Court</b> BY: <b>NADITA MASON</b> Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF <b>SAN FRANCISCO</b>  STREET / ADDRESS: <b>400 McAllister Street, Room 103</b> MAILING ADDRESS: CITY AND ZIP CODE: <b>San Francisco 94102</b> BRANCH NAME:		
PLAINTIFF/PETITIONER: <b>Frederick C. Fiechter</b> DEFENDANT/RESPONDENT: <b>Carl Wescott</b>		
REQUEST FOR (Application) <input checked="" type="checkbox"/> Entry of Default <input type="checkbox"/> Clerk's Judgment <input type="checkbox"/> Court Judgment		CASE NUMBER <b>CGC 10 496091</b>

1. TO THE CLERK: On the complaint or cross-complaint filed
- on (date): **1 Nov 2011 [Third Amended Complaint]**
  - by (name): **Frederick C. Fiechter**
  - ☒ Enter default of defendant (names): **Carl Wescott**
  - ☐ I request a court judgment under Code of Civil Procedure sections 585(b), 585(c), 989, etc. against defendant (names):  
 (Testimony required. Apply to the clerk for a hearing date, unless the court will enter a judgment on an affidavit under Code Civ. Proc., § 585(d).)  
 e. ☐ Enter clerk's judgment  
 (1) ☐ for restitution of the premises only and issue a writ of execution on the judgment. Code of Civil Procedure section 1174(c) does not apply (Code Civ. Proc., § 1169.)  
☐ Include in the judgment all tenants, subtenants, named claimants, and other occupants of the premises. The Prejudgment Claim of Right to Possession was served in compliance with Code of Civil Procedure section 415.46.  
 (2) ☐ under Code of Civil Procedure section 585(a). (Complete the declaration under Code Civ. Proc., § 585.5 on the reverse (item 5).)  
 (3) ☐ for default previously entered on (date):
2. Judgment to be entered.
- |                          | Amount | Credits acknowledged | Balance |
|--------------------------|--------|----------------------|---------|
| a. Demand of complaint   | \$     | \$                   | \$      |
| b. Statement of damages: |        |                      |         |
| (1) Special              | \$     | \$                   | \$      |
| (2) General              | \$     | \$                   | \$      |
| c. Interest              | \$     | \$                   | \$      |
| d. Costs (see reverse)   | \$     | \$                   | \$      |
| e. Attorney fees         | \$     | \$                   | \$      |
| f. TOTALS                | \$     | \$                   | \$      |
- g. Daily damages were demanded in complaint at the rate of \$ \_\_\_\_\_ per day beginning (date):  
 ('Personal injury or wrongful death actions, Code Civ. Proc., § 425.11.)
3. ☐ (Check if filed in an unlawful detainer case) Legal document assistant or unlawful detainer assistant information is on the reverse (complete item 4).

Date: March 19, 2015

David M. Zeff

(TYPE OR PRINT NAME)

FOR COURT USE ONLY	(1) <input checked="" type="checkbox"/> Default entered as requested on (date): <b>3/20/15</b>	Clerk, by: <i>Nadita Mason</i> Deputy
	(2) <input type="checkbox"/> Default NOT entered as requested (state reason):	

Form Adopted for Mandatory Use  
 Judicial Council of California  
 CIV-100 (Rev. January 1, 2007)

**REQUEST FOR ENTRY OF DEFAULT**  
 (Application to Enter Default)

Page 1 of 2  
 Code of Civil Procedure,  
 §§ 585, 587, 1169  
 www.courtinfo.ca.gov

LexisNexis® Automated California Judicial Council Forms

CIV-100

PLAINTIFF/PETITIONER: Frederick C. Fiechter	CASE NUMBER:
DEFENDANT/RESPONDENT: Carl Wescott	CGC 10 496091

4 Legal document assistant or unlawful detainer assistant (Bus. & Prof. Code, § 6400 et seq.). A legal document assistant or unlawful detainer assistant ☐ did ☐ did not for compensation give advice or assistance with this form. (If declarant has received any help or advice for pay from a legal document assistant or unlawful detainer assistant, state)

a. Assistant's name:  
b. Street address, city, and zip code:

c. Telephone no.:  
d. County of registration:  
e. Registration no.:  
f. Expires on (date):

5. ☒ Declaration under Code of Civil Procedure Section 585.5 (required for entry of default under Code Civ. Proc., § 585(a)). This action

- a. ☐ is ☒ is not on a contract or installment sale for goods or services subject to Civ. Code, § 1801 et seq. (Unruh Act).  
b. ☐ is ☒ is not on a conditional sales contract subject to Civ. Code, § 2981 et seq. (Rees-Levaring Motor Vehicle Sales and Finance Act).  
c. ☐ is ☒ is not on an obligation for goods, services, loans, or extensions of credit subject to Code Civ. Proc., § 395(b).

6. Declaration of mailing (Code Civ. Proc., § 587). A copy of this Request for Entry of Default was

- a. ☐ not mailed to the following defendants, whose addresses are unknown to plaintiff or plaintiff's attorney (names):  
b. ☒ mailed first-class, postage prepaid, in a sealed envelope addressed to each defendant's attorney of record or, if none, to each defendant's last known address as follows:

(1) Mailed on (date):

March 19, 2015

March 19, 2015

(2) To (specify names and addresses shown on the envelopes):

Carl Wescott, San Pedro Sula, Honduras

Carl Wescott P.O. Box 191273, San Francisco, CA 94119

I declare under penalty of perjury under the laws of the State of California that the foregoing items 4, 5, and 6 are true and correct.  
Date: March 19, 2015

David M. Zeff

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

7 Memorandum of costs (required if money judgment requested). Costs and disbursements are as follows (Code Civ. Proc., § 1033.5):

- a. Clerk's filing fees ..... \$  
b. Process server's fees ..... \$  
c. Other (specify): ..... \$  
d. .... \$  
e. TOTAL ..... \$

f. ☐ Costs and disbursements are waived.

9. I am the attorney, agent, or party who claims these costs. To the best of my knowledge and belief this memorandum of costs is correct and these costs were necessarily incurred in this case.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.  
Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

8 ☒ Declaration of nonmilitary status (required for a judgment). No defendant named in item 1c of the application is in the military service so as to be entitled to the benefits of the Servicemembers Civil Relief Act (50 U.S.C. App. § 501 et seq.).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.  
Date: March 19, 2015

David M. Zeff

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

# Exhibit J



CIV-100

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>David M. Zeff</b> (Bar # 63289) Law Offices of David M. Zeff 1100 Larkspur Landing Circle, Suite 200 Larkspur, CA 94939 TELEPHONE NO.: (415) 923-1380 FAX NO. (Optional): (415) 923-1382 E-MAIL ADDRESS (Optional): dmz@zefflaw.com ATTORNEY FOR (Name): <b>FREDERICK C. FIECHTER, Plaintiff</b>	FOR COURT USE ONLY  <b>DEFAULT ENTERED AS REQUESTED</b>  <b>ELECTRONICALLY FILED</b> <i>Superior Court of California, County of San Francisco</i> <b>03/20/2015</b> <b>Clerk of the Court</b> BY: NADITA MASON Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO  STREET ADDRESS: 400 McAllister Street, Room 103 MAILING ADDRESS: CITY AND ZIP CODE: San Francisco 94102 BRANCH NAME:	CASE NUMBER  CGC 10 496091
PLAINTIFF/PETITIONER: Frederick C. Fiechter DEFENDANT/RESPONDENT: Carl Wescott	
REQUEST FOR (Application) <input checked="" type="checkbox"/> Entry of Default <input type="checkbox"/> Clerk's Judgment <input type="checkbox"/> Court Judgment	

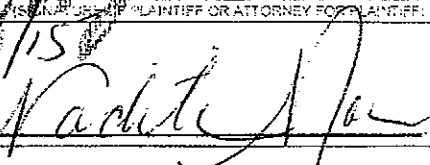
1. TO THE CLERK: On the complaint or cross-complaint filed
- on (date): 1 Nov 2011 [Third Amended Complaint]
  - by (name): Frederick C. Fiechter
  - ☒ Enter default of defendant (names): Carl Wescott
  - ☐ I request a court judgment under Code of Civil Procedure sections 585(b), 585(c), 989, etc., against defendant (names):
- (Testimony required. Apply to the clerk for a hearing date, unless the court will enter a judgment on an affidavit under Code Civ. Proc., § 585(d).)
- ☐ Enter clerk's judgment
    - ☐ for restitution of the premises only and issue a writ of execution on the judgment. Code of Civil Procedure section 1174(c) does not apply (Code Civ. Proc., § 1169.)  
☐ Include in the judgment all tenants, subtenants, named claimants, and other occupants of the premises. The Prejudgment Claim of Right to Possession was served in compliance with Code of Civil Procedure section 415.46.
    - ☐ under Code of Civil Procedure section 585(a). (Complete the declaration under Code Civ. Proc., § 585.5 on the reverse (item 5).)
    - ☐ for default previously entered on (date):
2. Judgment to be entered.
- |                           | <u>Amount</u> | <u>Credits acknowledged</u> | <u>Balance</u> |
|---------------------------|---------------|-----------------------------|----------------|
| a. Demand of complaint    | \$            | \$                          | \$             |
| b. Statement of damages * |               |                             |                |
| (1) Special               | \$            | \$                          | \$             |
| (2) General               | \$            | \$                          | \$             |
| c. Interest               | \$            | \$                          | \$             |
| d. Costs (see reverse)    | \$            | \$                          | \$             |
| e. Attorney fees          | \$            | \$                          | \$             |
| f. TOTALS                 | \$            | \$                          | \$             |
- g. Daily damages were demanded in complaint at the rate of \$ \_\_\_\_\_ per day beginning (date): \_\_\_\_\_
- (\* Personal injury or wrongful death actions, Code Civ. Proc., § 425.11.)
3. ☐ (Check if filed in an unlawful detainer case) Legal document assistant or unlawful detainer assistant information is on the reverse (complete item 4).

Date: March 19, 2015

David M. Zeff

(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF OR ATTORNEY FOR PLAINTIFF)

FOR COURT USE ONLY	(1) <input checked="" type="checkbox"/> Default entered as requested on (date): 3/20/15 (2) <input type="checkbox"/> Default NOT entered as requested (state reason):	Clerk, by:  Deputy
-----------------------	--	---

Page 1 of 2

CIV-100

PLAINTIFF/PETITIONER: Frederick C. Fiechter	CASE NUMBER:
DEFENDANT/RESPONDENT: Carl Wescott	CGC 10 496091

4 Legal document assistant or unlawful detainer assistant (Bus. & Prof. Code, § 6400 et seq.). A legal document assistant or unlawful detainer assistant ☐ did ☐ did not for compensation give advice or assistance with this form. (If declarant has received any help or advice for pay from a legal document assistant or unlawful detainer assistant, state)

- a. Assistant's name: c. Telephone no.:  
 b. Street address, city, and zip code: d. County of registration:  
 e. Registration no.:  
 f. Expires on (date):

5. ☒ Declaration under Code of Civil Procedure Section 585.5 (required for entry of default under Code Civ. Proc., § 585(a)). This action

a. ☐ is ☒ is not on a contract or installment sale for goods or services subject to Civ. Code, § 1801 et seq. (Unruh Act).  
 b. ☐ is ☒ is not on a conditional sales contract subject to Civ. Code, § 2961 et seq. (Rees-Levering Motor Vehicle Sales and Finance Act).  
 c. ☐ is ☒ is not on an obligation for goods, services, loans, or extensions of credit subject to Code Civ. Proc., § 395(b).

6. Declaration of mailing (Code Civ. Proc., § 587). A copy of this Request for Entry of Default was

- a. ☐ not mailed to the following defendants, whose addresses are unknown to plaintiff or plaintiff's attorney (names):  
 b. ☒ mailed first-class, postage prepaid, in a sealed envelope addressed to each defendant's attorney of record or, if none, to each defendant's last known address as follows:

(1) Mailed on (date): (2) To (specify names and addresses shown on the envelopes):  
 March 19, 2015 Carl Wescott, San Pedro Sula, Honduras  
 March 19, 2015 Carl Wescott P.O. Box 191273, San Francisco, CA 94119

I declare under penalty of perjury under the laws of the State of California that the foregoing items 4, 5, and 6 are true and correct.

Date: March 19, 2015

David M. Zeff

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

7 Memorandum of costs (required if money judgment requested). Costs and disbursements are as follows (Code Civ. Proc., § 1033.5):

- a. Clerk's filing fees \$  
 b. Process server's fees \$  
 c. Other (specify): \$  
 d. \$  
 e. TOTAL \$  
 f. ☐ Costs and disbursements are waived.

8. I am the attorney, agent, or party who claims these costs. To the best of my knowledge and belief this memorandum of costs is correct and these costs were necessarily incurred in this case.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

9. ☒ Declaration of nonmilitary status (required for a judgment). No defendant named in item 1c of the application is in the military service so as to be entitled to the benefits of the Servicemembers Civil Relief Act (50 U.S.C. App. § 501 et seq.).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: March 19, 2015

David M. Zeff

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

Civ-100 (Rev. January 1, 2007)

### REQUEST FOR ENTRY OF DEFAULT (Application to Enter Default)

Page 2 of 2

LawNews & Automated California Judicial Council Forms

# Exhibit K

1 David M. Zeff (SBN 63289)  
2 Law Offices of David M. Zeff  
3 1100 Larkspur Landing Circle, Suite 200  
4 Larkspur, California 94939  
5 Tel: (415) 923-1380  
6 Fax: (415) 923-1382

7 Attorneys for Plaintiff Fredrick C. Fiechter

ELECTRONICALLY  
**FILED**

Superior Court of California,  
County of San Francisco

**07/27/2015**  
Clerk of the Court

BY: MICHAEL RAYRAY

Deputy Clerk

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO**

10 **Frederick C. Fiechter,**  
11 **Plaintiff,**

12 **v.**

13 **CARL WESCOTT, an individual,**  
14 **MONETTE STEPHENS, individually**  
15 **and as Trustee of the Wescott-Stephens**  
16 **Family Trust; POOK SNOOK DOOK,**  
17 **LP; and Does 1 thorough 25, inclusive**

18 **Defendants.**

Case No. CGC-10-496091

**NOTICE OF ENTRY OF JUDGMENT**

19 **AND RELATED CROSS-ACTION**

20 **TO CARL WESCOTT:**

21 **PLEASE TAKE NOTICE** that on July 14, 2015, the attached **JUDGMENT FOR**  
22 **PLAINTIFF AND AGAINST DEFENDANT CARL WESCOTT AKA CARL A.**  
23 **WESCOTT** was entered in the above matter.

24 **Dated: July 24, 2015**

LAW OFFICES OF DAVID M. ZEFF

25 By   
26 **David M. Zeff, Attorneys For**  
27 **Frederick C. Fiechter**

28 **PAGE 1 — NOTICE OF ENTRY OF JUDGMENT**

Law Offices Of David M. Zeff  
1100 Larkspur Landing Crcl. # 200  
Larkspur, CA 94939  
Tel: (415) 923-1380

David M. Zeff (SBN 63289)  
Law Offices of David M. Zeff  
1100 Larkspur Landing Circle, Suite 200  
Larkspur, California 94939  
Tel: (415) 923-1380  
Fax: (415) 923-1382

Attorneys for Plaintiff Fredrick C. Fiechter.

**FILED**  
San Francisco County Superior Court

JUL 14 2015

CLERK OF THE COURT

BY: *J. Maganino*  
Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO**

**FREDERICK C. FIECHTER,**  
**Plaintiff,**

**v.**

**CARL WESCOTT, an individual,  
MONETTE STEPHENS, individually  
and as Trustee of the Wescott-Stephens  
Family Trust; POOK SNOOK DOOK,  
LP; and Does 1 thorough 25, inclusive**  
**Defendants.**

Case No. CGC-10-496091

**JUDGMENT FOR PLAINTIFF AND  
AGAINST DEFENDANT CARL  
WESCOTT AKA CARL A. WESCOTT**

**AND RELATED CROSS-ACTION**

This matter was called for trial on June 29, 2015, pursuant to the Notice of Time and Place of Trial served upon the parties by the Court Clerk on February 11, 2015.

Plaintiff Frederick C. Fiechter ("Fiechter") and his counsel of record, David M. Zeff ("Zeff") appeared and called ready at the trial call of this matter.

Cross-Complainant Carl Wescott, aka Carl A. Wescott ("Wescott") failed to appear for the trial call, having failed to seek a continuance or otherwise inform the Court of any reason the trial should not proceed. By reason of the failure to appear for trial by

PAGE 1 — JUDGMENT FOR PLAINTIFF AGAINST CARL WESCOTT

Law Offices Of David M. Zeff  
1100 Larkspur Landing Crcl. # 200  
Larkspur, CA 94939  
Tel: (415) 923-1380

1 Carl A. Wescott, and good cause appearing, the Cross-Complaint of Carl Wescott filed  
2 herein on May 5, 2010, is hereby dismissed with prejudice.

3 Plaintiff's counsel advised, and the Court takes judicial notice, of the fact that  
4 defendants Monette Stephens and POOK SNOOK DOOK, LP, have been dismissed from  
5 this action without prejudice by Plaintiff on February 24 2015. Consequently this default  
6 prove up is proceeding only against defendant Carl A. Wescott.

7 Plaintiff has agreed to dismiss without prejudice the Second Cause of Action for  
8 Common Counts and the Fourth Cause of Action for Fraudulent Conveyance and proceed  
9 only on the First Cause of Action for Breach of Contract and the Third Cause of Action  
10 for Fraud.

11 Plaintiff provided to the Court and requested that the Court take judicial notice of  
12 the following documents filed in this Court, the U. S. Bankruptcy Court for the Northern  
13 District of California, and the Ninth Judicial District Court of the State of Nevada:

14 1) Complaint filed on June 18, 2010, in this action, San Francisco Superior Court  
15 no. CGC 10-496091;

16 2) Order Deeming Admitted Truth of Facts and Genuineness of Documents and  
17 Imposing Monetary Sanctions entered in this action on September 28, 2010;  
18 Complaint;

19 3) Order Imposing Issue and Evidence Sanctions Against Defendant Carl Wescott  
20 entered in this action on May 11, 2011;

21 4) Judgment Entered Pursuant to Code of Civil Procedure Section 1710.25 in the  
22 matter entitled *Frederick C. Fiechter v. Carl Wescott*, S. F. Superior Court No. CPF-11-  
23 511547.

24 5) Third Amended Complaint filed in this action on November 1, 2011;

25 6) Summons Issued on the Third Amended Complaint in this action issued  
26 November 2, 2011;

27 7) Errata To Plaintiff's Third Amended Complaint Filed November 1, 2011, filed  
28 in this action on January 3, 2012;

PAGE 2 — JUDGMENT FOR PLAINTIFF AGAINST CARL WESCOTT

Law Offices Of David M. Zeff  
1100 Larkspur Landing Crcl. # 200  
Larkspur, CA 94939  
Tel: (415) 923-1380

1 8) Copy of the complete four page of the Docket in U. S. Bankruptcy Court, N.D.  
2 Cal, No. 11-34426 *In re Debtors Carl Alexander Wescott and Monette Rosemarie*  
3 *Stephens*, commenced December 13, 2011, which was terminated without discharge as to  
4 all debtors on January 27, 2012;

5 9) Copy of the first page of the Docket in U. S. Bankruptcy Court, N.D. Cal, No.  
6 12-30143, *In re Debtors Carl Alexander Wescott and Monette Rosemarie Stephens*,  
7 commenced January 17, 2012;

8 10) Order Granting Summary Judgment on Trustee's motion to deny discharge to  
9 Debtor Carl Alexander Wescott filed May 3, 2013, in U. S. Bankruptcy Court, N.D. Cal,  
10 No. 12-30143;

11 11) Notice of Time and Place of Trial served by the Clerk of this Court upon the  
12 parties in this action on February 11, 2015;

13 12) Proof of Service of Summons and Third Amended Complaint with Errata Filed  
14 in this action on February 13, 2015;

15 13) Default of Carl Wescott entered as requested filed in this action on March 20,  
16 2015.

17 The Court having reviewed the aforesaid documents, it takes judicial notice of  
18 their contents and incorporates the contents of said documents as facts supporting the  
19 factual findings stated below in support of this judgment.

20 Plaintiff also submitted the Declaration of David M. Zeff, Counsel for Plaintiff, to  
21 which were attached true copies of PLAINTIFF'S AND CROSS-DEFENDANT'S  
22 REQUESTS FOR ADMISSIONS TO DEFENDANT AND CROSS-COMPLAINANT  
23 CARL A. WESCOTT, to which item no. 3, above, the Order Imposing Issue and  
24 Evidence Sanctions Against Defendant Carl Wescott entered in this action on May 11,  
25 2011, applies. Said Declaration also contained a calculation of the interest due on the  
26 Promissory Note subject to the operative Third Amended Complaint, and Zeff's  
27 testimony, as counsel for Plaintiff, that the attorneys fees and costs incurred by Plaintiff in  
28 this proceeding and the resulting Bankruptcy proceeding were reasonable and necessary

PAGE 3 — JUDGMENT FOR PLAINTIFF AGAINST CARL WESCOTT

Law Offices Of David M. Zeff  
1100 Larkspur Landing Crl. # 200  
Larkspur, CA 94939  
Tel: (415) 923-1380



1 to this successful prosecution.

2 Plaintiff also submitted a Certified copy of the deposition testimony taken under  
3 oath of Carl Wescott in the 341 examination on March 21, 2012, in the bankruptcy  
4 proceeding entitled In Re: Carl Wescott, U.S. Bankruptcy Court, N.D. Cal No. 12-30143  
5 DM.

6 This Court having entered the default of Carl Wescott to Plaintiff's Third  
7 Amended Complaint on March 20, 2015, the trial of this matter was conducted as a  
8 default prove-up before the undersigned Judge of the Superior Court. Said prove-up  
9 proceeded to prove-up by way of the above submitted documents and the testimony under  
10 oath of Plaintiff Frederick C. Fiechter.

11 Findings of Fact

12 Based upon the documents which are admitted by way of judicial notice, the  
13 testimony of Mr. Feichter and the Discovery Orders previously entered herein the Court  
14 makes the following findings of fact:

- 15 1. Fiechter had a friendship with Wescott in the years prior to the loan here in issue  
16 and to prior loans made to Wescott, some of which were paid and some of which  
17 were unpaid and "rolled" into the "Secured Promissory Note" dated May 7, 2008  
18 given by Wescott to Fiechter which is Exhibit A to the Third Amended Complaint,  
19 RJN No. 5 (Hereafter "the Note").
- 20 2. At the time of the loans preceding the Note here in issue, Wescott had represented  
21 to Fiechter that Wescott had a personal net worth in excess of \$28 million and that  
22 Wescott had made this money as a successful tech entrepreneur and real estate  
23 investor.
- 24 3. At the time of the loans preceding the Note here in issue, Fiechter had done  
25 personal research about representations Wescott had made about having been very  
26 successful as a tech entrepreneur and real estate investor and that all of the  
27 information he had been able to obtain confirmed Wescott's statements. Fiechter  
28 testified that when he did this "due diligence," he found no negative references to



1 Wescott which would cause him to distrust Wescott's statements.

2 4. At the time Wescott sought to roll the prior sums due into a new note, and obtain  
3 additional loaned funds from Fiechter to be subject to the Note, Wescott made the  
4 following representations to Fiechter:

5 a. That Wescott had provided to Fiechter a true and accurate personal balance  
6 sheet stating his assets, liabilities and accounts receivable, which balance sheet  
7 was appended to the Note;

8 b. That Wescott had a net worth of over \$28 Million;

9 c. That Wescott had the ability and intention to perform and fully repay the sums  
10 subject to the Note.

11 5. The personal balance sheet Wescott had given Fiechter as part of the Note was  
12 false in that certain properties listed on the balance sheet were represented by  
13 Wescott as owned when they were not owned but optioned, that the values of some  
14 of the properties listed on the balance sheet were false in that they were subject to  
15 undisclosed encumbrances which made them of little or no value, or the values  
16 listed were not current values but instead were Wescott's "projected" values if the  
17 property were, in the future, fully and successfully developed. Said balance sheet  
18 was also false in representing certain properties as 100% owned by Wescott when  
19 in fact they were only fractionally owned or owned by legal entities in which  
20 Wescott had ownership interests, such as LLC's, but not owned wholly by  
21 Wescott. Fiechter only learned of the falsity of the representations in the balance  
22 sheet and the concealment of material facts concerning the balance sheet items in  
23 the ensuing bankruptcy proceedings filed by Wescott. Fiechter also learned in the  
24 course of said Wescott bankruptcy that Wescott had no ability to repay the sums  
25 loaned on the Note at or after Fiechter loaned said funds to Wescott pursuant to the  
26 Note.

27 ///

28 ///

6. Fiechter would not have loaned any of the funds subject to the Note to Wescott if he had known that the above representations by Wescott were false, or that Wescott had concealed material facts, or that Wescott had no ability to repay the sums loaned on the Note.
7. Wescott has paid nothing of the interest or principal due and owing on the Note.
8. Fiechter has been forced to pursue this action, including expenses in trying to locate and serve Wescott who avoided service; make multiple motions to obtain pre-judgment attachments all of which turned out worthless, take discovery, compel discovery and, when this action was stayed by reason of Wescott's two bankruptcy filings, Fiechter was forced to incur substantial additional attorneys fees and costs in defending his interests in the bankruptcies and assist the Trustee in having the Bankruptcy Court order that Wescott would be denied a discharge of this and other debts in said proceeding.

#### Conclusions of Law

The court reaches the following conclusions of law based upon all of the evidence in the record and adduced at trial:

#### On the First Cause of Action: Breach of Contract

1. Wescott breached the Secured Promissory Note dated May 7, 2008 given by Wescott to Fiechter which is Exhibit A to the Third Amended Complaint, RJN No. 5.

2. As a direct and proximate consequence of Wescott's breach of contract, Fiechter is entitled to the following recovery:

A. Principal in the sum of \$569,901.33.

B. Accrued interest at the legal rate of 10% per annum from the date of the Note, May 7, 2008; to the date of Judgment herein, which sum amounts to \$407,050.19, as of the date of trial, and daily interest of \$156.14 for each day hereafter.

C. Reasonable Attorneys fees and costs under paragraph 10 of the Note. The Court has reviewed the ledger provided by Fiechter of payments made, the declaration of David M. Zeff as to why the attorneys fees and costs incurred were reasonable and

1 necessary and the bills and billing summaries tendered to the Court at the time of trial.  
2 Consequently, the Court makes the award of Attorneys fees and costs as set forth below.

3 On the Third Cause of Action: Fraud

4 1. The following representations made by Wescott to Fiechter to induce Fiechter  
5 to loan the funds subject to the Note were false when made and Wescott knew them to be  
6 false when he made them:

7 a. That prior to the loan, Wescott had provided to Fiechter a personal balance  
8 sheet which purportedly stated Wescott's assets, liabilities and accounts receivable at the  
9 time of the loan, and appended the balance sheet to the Note;

10 b. That Wescott represented to Fiechter that the balance sheet was a true and  
11 accurate reflection of his personal net worth at the time of the loan;

12 b. That Wescott had a net worth of over \$28 Million;

13 c. That Wescott had the ability and intention to perform and fully repay the sums  
14 subject to the Note.

15 2. That Fiechter relied upon Wescott's above representations, including the  
16 financial information contained in the balance sheet, in loaning the funds to Wescott  
17 subject to the Note, and that Fiechter's reliance was reasonable.

18 3. The representations were material, false and made to induce Fiechter to loan  
19 Wescott the sum of \$569,901.33.

20 4. That Wescott had intentionally concealed many material facts concerning the  
21 purported "fixed assets" identified in the balance sheet given to Fiechter as inducement  
22 for the loan in issue.

23 5. That Wescott obtained the sums loaned by Fiechter by false pretenses, false  
24 representations and actual fraud by way of false and fraudulent oral representations and  
25 by use of statements in writing that were materially false respecting Wescott's financial  
26 condition on which Fiechter reasonably relied in advancing money and credit as  
27 evidenced by the Note.

28 ///

6. As a direct and proximate consequence of Wescott's false representations and actual fraud, Fiechter was damaged and is entitled to the following recovery, by way of the benefit of the bargain rule and/or Civil Code §3333:

A. Principal in the sum of \$569,901.33.

B. Accrued interest at the legal rate of 10% per annum from the date of the Note, May 7, 2008, to the date of Judgment herein, which sum amounts to \$407,050.19, as of the date of trial, and daily interest of \$156.14 for each day hereafter.

C. Reasonable Attorneys fees and costs under paragraph 10 of the Note. The Court has reviewed the ledger provided by Fiechter of payments made, the declaration of David M. Zeff as to why the attorneys fees and costs incurred were reasonable and necessary and the bills and billing summaries tendered to the Court at the time of trial. Consequently, the Court makes the award of Attorneys fees and costs as set forth below.

~~D. Due to Wescott's actual fraud, Fiechter is entitled to recover exemplary damages pursuant to Civil Code §3294.a. The Court determines that the proper amount of exemplary damages to be imposed upon Wescott for his actual fraud against Fiechter is the sum of \$~~

### JUDGMENT

The Court determines that there shall be no double recovery on the First and Third Causes of Action. Consequently, on both causes of action judgment is hereby entered for Plaintiff Fredrick C. Fiechter and against Defendant Carl Wescott, aka Carl A. Wescott, as follows:

1. Principal in the sum of \$569,901.33.

2. Accrued interest at the legal rate of 10% per annum from the date of the Note, May 7, 2008, to the date of Judgment herein, which sum amounts to \$407,050.19, as of the date of trial, and daily interest of \$156.14 for each day hereafter.

3. Reasonable Attorneys fees and costs in the following amounts:

Attorneys fees:

\$ Costs:

~~\$222,222.22~~  
\$ 513,080.79

2

5.

6

8

9

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22

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**PROOF OF SERVICE**

I declare that: I am over the age of 18 years and not a party to the within entitled action; my business address is:

Law Offices Of David M. Zeff  
1100 Larkspur Landing Circle, Suite 200  
Larkspur, California 94939

On July 24, 2015, I served the following document(s):

**NOTICE OF ENTRY OF JUDGMENT**

on the following counsel or parties in propria persona:

Carl Wescott  
San Pedro Sula  
Honduras  
Email: [c@carlwescott.com](mailto:c@carlwescott.com)

Carl Wescott  
P.O. Box 191273  
San Francisco, CA 94119  
Email: [c@carlwescott.com](mailto:c@carlwescott.com)

by the following means:

**XX MAIL:** By placing a true copy thereof enclosed in a sealed envelope, addressed as set forth on the Service List above, with first class postage thereon fully prepaid, in the United States mail at Larkspur, California.

**XX ELECTRONIC MAIL (email):** By sending a true copy thereof via electronic mail (email) to the confirmed email address of said party as designated on the Service List above.

I declare under penalty of perjury that the foregoing is true and correct, and that this Proof Of Service was executed at Larkspur, California.

Dated: July 24, 2015

  
\_\_\_\_\_  
David M. Zeff

# Exhibit L

Carl A. Wescott  
PO Box 191906  
San Francisco, CA 94119  
*in propria persona*  
+1 415 335 5000

**FILED**  
Superior Court of California  
County of San Francisco

NOV 12 2019

CLERK OF THE COURT  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
Deputy Clerk

FREDERICK C. FIECHTER

Plaintiff,

vs.

CARL A WESCOTT,

Defendant

Case No. CGC-10-496091

**MOTION TO SET ASIDE DEFAULT  
JUDGMENT**

Hearing Date: Tuesday December 3, 2019  
Hearing Time: 9:30 am  
Dept: 302 (Law and Motion Calendar)  
RESERVATION NUMBER: 011041203-14

DEFENDANT Carl A. Wescott proceeding *pro se*, hereby moves this Court, using its inherent equitable power, to overturn the Judgment entered in this matter on July 27<sup>th</sup>, 2015 by reason of extrinsic fraud or mistake. In support of his Motion, the Defendant offers this concise Memorandum of Points & Authorities.

1. Introduction

The Defendant contends that the Judgment issued on July 27, 2015 was procured by fraud as no serious attempt was made to serve the Defendant with the Third Amended Complaint, nor to provide the Defendant ongoing discovery and other case papers. A proof of service (attached hereto as Exhibit "A") was filed by attorney David Zeff that contended the Defendant was "served" care of *a city and a country*: (with a CC to an obsolete email address):

Carl Wescott San Pedro Sula Honduras

MOTION TO SET ASIDE DEFAULT JUDGMENT



1 The Plaintiff's case was non-meritorious but that was taken care of by a fraud on the  
2 Court. The judgment thus obtained should not have been legally or morally collectable, but the  
3 Plaintiff was more interested in harassing and tormenting the Defendant than he was actually  
4 collecting on the judgment. The Default Judgment is properly subject to collateral attack. Now  
5 that Defendant is aware of this particular aspect of fraud on the part of Plaintiff and his attorneys,  
6 the judgment will be attacked by a proper CCP 473 Motion and hopefully will be rescinded. The  
7 matter should have been decided on the merits (or demerits as the case may be), and not  
8 fraudulently engineered by Mr. Zeff's fraudulent proof of service.

9  
10 With respect to the Plaintiff's present Motion (for Assignment and Charging Orders) that  
11 Plaintiff is acting based on information provided by a third-party witness, Robert J. Block  
12 ("Block"), who is Defendant's paralegal who was and is under an obligation of confidentiality  
13 not only statutorily but also by written agreement. The Defendant, a humble logician, cannot  
14 afford an attorney but has needed legal help from professionals, and Mr. Block has been helpful  
15 in advising him on aspects of California law and drafting parts of his needed filings.  
16 Unfortunately, Mr. Block suffers from substance abuse issues, namely alcohol, and Mr. Zeff  
17 preyed upon Mr. Block's sensibilities by offering him alcohol money in a time of need, to bribe  
18 Mr. Block and induce a fiduciary breach.

19  
20 Mr. Block is prominently, though somewhat selectively mentioned in the Plaintiff's  
21 Motion. California legal authorities caution practitioners against accepting such voluntary  
22 assistance, especially by witnesses who charge for their trouble as Block did. The reasons should  
23 have been obvious to Mr. Zeff. The witness may have stolen the information – and the attorney  
24 has a professional duty not to facilitate a crime. As in this case, the witness may be under a  
25 fiduciary or contractual duty of non-disclosure – and the attorney has a professional duty to  
26  
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1 respect the rights of third parties as his client does not to burden or interfere with contractual  
2 rights. The Defendant is covering these issues in considerable detail in a collateral Motion to  
3 Disqualify attorney Zeff. The Defendant will be providing such for this Court not only for its  
4 anticipated hearing date of Monday, December 2<sup>nd</sup>, 2019, but also as further reasoning that he  
5 invites the Court to reference in relation to this Opposition as the documents are based on a  
6 common argument: Mr. Zeff obtained the information by turning the Rules of Professional  
7 Conduct into a sieve and committing acts of bribery. The Plaintiff should not be permitted to  
8 benefit from unethical and likely illegal acts by his attorney which he has appeared to ratify.  
9

10  
11 Indeed, *All* of the information/evidence the Plaintiff cites in support of his Motion was  
12 obtained as a result of communications with said Mr. Block, who directly solicited payment from  
13 attorney Zeff and was also offered payment by Mr. Zeff and was in fact directly paid by Mr.  
14 Zeff's firm. Mr. Block tipped Mr. Zeff off to Defendant's PayPal account, with funds to be used  
15 for a Child Support payment. Defendant had emailed his ex-wife's attorney (Mr. Terry Szucsko)  
16 about making such a payment with those funds.  
17

18 Mr. Block also tipped off Mr. Zeff (with an accompanying bribe) as to the Defendant's  
19 job with SparkLabs, a fund accelerator, and consulting assignment with Salveo Capital, a venture  
20 capital fund, as well as a third entity which was a Puerto Rico domiciled hedge fund. After being  
21 bribed by Mr. Zeff, who wished to steal confidential and privileged information from a legal  
22 adversary's paralegal, and did indeed do so, Mr. Block also provided Mr. Zeff confidential and  
23 privileged insider information as to the details of cases the Defendant was pursuing. Mr. Zeff  
24 bribed Mr. Block to offer his expert opinion on the merits of those cases; and provided a Bank of  
25 America account number for Side Coast Inc., a corporate bank account in to which Mr. Zeff  
26  
27  
28

1 would not have had visibility in to (See Sworn Declaration of Carl Wescott attached hereto as  
2 Exhibit “A” and sub-exhibits thereto)

3 The Defendant subsequently informed and reconfirmed to Mr. Zeff that Mr. Block had  
4 been his paralegal for almost two years vehemently objected to Mr. Zeff’s acts of bribery and  
5 misappropriation. See, Exhibit “B” and sub-exhibits. Mr. Zeff deals with this in his filings with a  
6 single conclusory paragraph in his affidavit:  
7

8 In a phone conversation with me, Mr. Block informed  
9 me that he has known Mr. Wescott for more than two years, that Block was once a  
10 licensed attorney but has not been one for many years, that at no time that he was a  
11 licensed attorney did Block provide any legal services of any kind for Mr. Wescott,  
12 and that Block has not had and currently does not have a confidential, fiduciary or  
13 contractual relationship with Mr. Wescott which would cause Block to owe Wescott  
14 any duty of confidentiality. This was confirmed by Block in **Exhibit 7** hereto. Mr.  
15 Block further informed me that he has provided Mr. Wescott technical writing and  
16 copy-editing services and, on occasion, non-regulated financial consulting services.

17 Mr. Zeff admits that he is aware Block is a former licensed attorney. However, Mr. Zeff  
18 accepts the glib self-serving conclusion of Block who successfully solicited payments from Zeff,  
19 that Block has no fiduciary obligations or obligations of confidentiality. Indeed, the “technical  
20 writing” and “copy-editing” services as well as the “financial consulting services” could be  
21 sufficient to give rise to a duty of confidentiality in and of themselves. But in point of fact,  
22 Block is a *disbarred Illinois attorney* as Mr. Zeff well knows or should have known had he  
23 conducted the most cursory research. Mr. Zeff directly paid a disbarred attorney to obtain  
24 confidences about a client for whom the disbarred attorney was performing paralegal services,  
25 subject to the confidentiality strictures of Business & Professions 6068. Block sent Mr. Zeff  
26 portions of legal pleadings that he in fact had drafted (see Exhibit A). Mr. Zeff was either aware  
27 of or willfully blind to the fact that he was receiving highly sensitive and confidential  
28 information from an alcoholic legal advisor having delirium tremens. Mr. Zeff induced a breach

1 of Mr. Block's fiduciary duty, breaching his own ethical duties as well as the need to inform the  
2 Court of his possession of stolen confidential and privileged information. Mr. Zeff should never  
3 have carried out these tortious acts and crimes (including wrongfully stealing a Child Support  
4 payment from Defendant's children). Having carried out these crimes, Mr. Zeff's further  
5 obligations besides disclosure to the Court would have included withdrawal.  
6

7 This Court is in a unique position to apply the understanding of an expert to Mr. Zeff's  
8 situation. He had discussions with a disbarred lawyer and induced him to peddle sensitive  
9 financial and litigation information. Mr. Zeff paid the disbarred lawyer, the Defendant's  
10 paralegal, and bribed him to steal sensitive information. The Defendant appeals to the expert  
11 judgment of this Court: should the situation not have set off deafening ethical alarm bells? Was  
12 Mr. Zeff justified in presenting this Motion without even mentioning the vociferous protests of  
13 the Defendant that his reasonable expectations of confidentiality had been breached. Would this  
14 information have been material to the Court's decision? Are California collection lawyers a sub-  
15 species of professionals to whom the California Code of Ethics and that of the ABA does not  
16 apply?  
17

18  
19 Mr. Block was the Defendant's paralegal. California has disqualified attorneys who were  
20 privy to confidences from non-attorney employees with access to confidential litigation related  
21 information. Block was employed and paid by the Defendant to assist him with litigation and he  
22 was afforded the trust and confidence of a fiduciary. He prepared legal briefs, related  
23 correspondence, advised the Defendant on litigation strategy and on potential transactions. He  
24 functioned as an in-house lawyer would function.  
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1 In all candor with the Court, the Defendant is absolutely convinced that Mr. Zeff was on  
2 actual notice – that he was in point of fact bribing a fiduciary to betray his fiduciary duty. This  
3 type of bottom-of-the-barrel ethics should not be and cannot be countenanced by this Court. Mr.  
4 Zeff's conduct arguably justifies *terminating* sanctions but it undoubtedly justifies the  
5 disqualification of Mr. Zeff and his firm by reason of the fact that they hired Block and induced  
6 him to betray the Defendant. That is being address in a parallel Motion to disqualify which  
7 cannot be heard until Monday, December 2<sup>nd</sup>, 2019, due to service requirements. (Ironically, the  
8 Defendant, a legal layperson and pro se, is following California law with respect to service, after  
9 Mr. Zeff, a licensed attorney – hopefully not for long – induced a default judgment in the instant  
10 case by purposely **not** serving the Defendant).

13 The Defendant hereby records his Opposition and the basis therefore. The Plaintiff  
14 should quite simply not be allowed to exploit information that he obtained as the result of bribing  
15 the Defendant's legal advisor. As a Court of Equity, the Court should deny the Plaintiff's  
16 Motion. In setting out the further basis for his Opposition the Defendant will discuss  
17 Disqualification and Terminating Sanctions and will shortly file the appropriate Motions seeking  
18 such relief. The Defendant will also be filing a Motion pursuant to CCP 473 to overturn the  
19 Judgment in this matter, also obtained by extrinsic fraud upon this Honorable Court.

22 The Plaintiff's prosecution of this case has been an outrageous and egregious fraud from  
23 start to finish. But first, the Defendant is anxious to get the most important facts in front of the  
24 Court in connection with this Opposition so that the Court can properly deny the Plaintiff's  
25 Motion and then go on to fashion appropriate relief even if that involves the filing of separate  
26 Motions by the Defendant. Paraphrasing Kurt Vonnegut, referring to Mr. Zeff's impending exit,  
27 "And so it shall go."  
28

1 The Defendant regrets the need to frame it this way, but the Plaintiff has pursued a  
2 corrupt case, brought by a corrupt lawyer, and seeks to upend the Defendant's life and business  
3 with betrayed confidences bought and paid for by a disbarred lawyer from out of state. Quite  
4 frankly, the Plaintiff's case and his lawyer's license should be forfeit as a result of their  
5 misbehavior and dishonesty before this Tribunal.  
6

7 The Defendant will take a moment to comment on the quality of the evidence presented  
8 by the Plaintiff in support of his Motion. The Plaintiff has produced PayPal records that might  
9 impute an annual income of perhaps \$25,000 per year to the Defendant, if he had earned the  
10 monies in those Paypals rather than having sought loans. Forgetting the facts for a moment, had  
11 Defendant actually earned those monies, they would hardly be evidence of solvency let alone  
12 prosperity. In San Francisco, an income of US \$129,000 is below the poverty line, and those  
13 with such incomes cannot afford to live in this august city until they have already secured a rent-  
14 controlled apartment years ago or own a home outright. Of course, the Plaintiff has no way of  
15 knowing how much of the money transmitted represents actual income, as opposed to the loans  
16 they are. The Defendant provided information to Mr. Zeff as to his lack of income and the fact  
17 that he was on food stamps, and even provided his EBT card in suggesting that collection efforts  
18 on behalf of his client should be unavailing. (Exhibit "C"). Further, Mr. Fiechter has no right to  
19 any monies (even if his judgment were not obtained by fraud) under California law as the  
20 Defendant owes consideration sums to his ex-wife for Child Support, Spousal Support, and  
21 Other Payments to Spouse. The Defendant provided this information to Mr. Zeff as well  
22 (Exhibit "D"). Thus, as per California law, Defendant must first pay Child Support off, and the  
23 other categories to Spouse, before any other creditors can collect anything. Mr. Zeff (and  
24  
25  
26  
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28

1 therefore, legally, Mr. Fiechter) had constructive notice of all of these facts, but yet blithely  
 2 proceeded forward without even considering much less following California law.

3  
 4  
 5 2. The Plaintiff's Motion Should be Denied, Because the Plaintiff Wrongfully Obtained &  
 6 Misused the Defendant's Confidential Information

7 Under the law of California, when a California attorney receives confidential and/or  
 8 privileged information of an adverse party, they are to (1) refrain from examining the  
 9 information any more than is essential to ascertain if the information is privileged, (2)  
 10 immediately notify the holder of the privilege, and (3) proceed to resolve the situation by  
 11 agreement or with the guidance of the court. *Rico v. Mitsubishi Motors Corp.*, 116 Cal.App.4<sup>th</sup>  
 12 51 (Cal.App. 2004). Indeed, the Court pointed out:

13  
 14 A brief look and a simple phone call could have resolved the matter. Instead, Johnson, as  
 15 the court found, "studied the document carefully, made his own notes on it, dispensed the  
 16 information to his associates and experts, discussed the meaning of the notes with the  
 17 experts and based his litigation strategy and expert witness cross-examination upon the  
 information contained in the document."

18 Zeff was thus professionally and ethically obligated to consult with the Defendant concerning the  
 19 nature of his relationship with Block and the confidentiality of the materials that were being  
 20 provided. If the parties could not reach agreement, he was alternatively required to seek the  
 21 guidance of the Court. He did neither. He paid a disbarred lawyer for the Defendant's most  
 22 sensitive confidential information and attempted to "paper over" the breach by having the  
 23 alcoholic disbarred lawyer parrot the *conclusion* that he was not a fiduciary. This behavior does  
 24 not comply with California law.

25  
 26 The fact that Block was not an attorney at the time he made the overture is not  
 27 controlling. Block disclosed that he was a former attorney, and a search by Zeff of the Illinois  
 28



1 ARDC web site would have disclosed that he was a disbarred attorney, a circumstance which  
2 bespeaks caution. Moreover, it is not essential that confidences be obtained from an attorney to  
3 be disqualifying. In the recent case of *O'Gara Coach v. Ra* 286730 1/7/19 (Cal.App.) the Court  
4 disqualified an attorney who had been provided access to litigation confidences as a non-attorney  
5 executive. The Court pointed out:

7 Attorney disqualification to support the fundamental principle of protecting client  
8 confidences is not limited to situations in which an adversary's privileged  
9 communications have been acquired through a prior attorney-client relationship: "a law  
10 firm that hires a nonlawyer who possesses an adversary's confidences creates a situation,  
11 similar to hiring an adversary's attorney, which suggests that confidential information is  
12 at risk". *In Re Complex Asbestos Litigation* (1991)

13 Thus, Zeff's self-serving pabulum about Block being an unregistered financial consultant or a so-  
14 called "technical writer" is irrelevant. As Mr. Zeff saw from brief drafts provided by Mr. Block,  
15 said writing was actually paralegal document drafting such as motions, briefs, and pleadings.  
16 Block had access to the Defendant's confidences. The Plaintiff, through Zeff's firm, paid Block  
17 many hundreds of dollars to obtain that confidential information. The transaction is corrupt as a  
18 matter of California law.

19 The Plaintiff is aware that the Court will wish to proceed in an orderly manner and he is  
20 not attempting to confuse any issues. Motions to Disqualify are disfavored and the Defendant  
21 will require reasonable time to put together an appropriate Motion to Disqualify. At this point,  
22 the Defendant is pointing out to the Court that the Plaintiff's Motion is entirely based on  
23 information that was obtained improperly and unethically and that the violations are serious  
24 enough to warrant Disqualification. Block was the source of the Plaintiff's information about the  
25  
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1 Defendant's PayPal account; Block was the source of the information about Sparks Labs as well  
 2 as all of the other business prospects identified in the Plaintiff's Motion<sup>1</sup>.

3  
 4 Momentarily embarrassed counsel for the Plaintiff Zeff conspired with disbarred attorney  
 5 Block for the purpose of obtaining information that the Defendant had confided to Block as his  
 6 Paralegal, subject to the strictures of Business & Professions 6068. The Defendant did not  
 7 believe that the Plaintiff could top his opening act of fraudulently serving the Defendant in care  
 8 of a country (Honduras) of 43,433 square miles with a population of 9.265 million but the  
 9 Defendant now believes that the Plaintiff has done precisely that by bribing his Paralegal.

10  
 11 The Defendant is arguing that this Court should deny, or at least Stay the Plaintiff's  
 12 Motion pending an inquiry into the ethical and possible criminal infractions of Plaintiff's  
 13 attorney Zeff.

14  
 15  
 16 3. Under California Law, the Misconduct of Plaintiff's Counsel Would Justify Terminating  
 17 Sanctions

18 In *Slesinger v. Disney*, (2007) 155 Cal.App.4<sup>th</sup> 736 the Court, confronted with (less  
 19 egregiously) improperly obtained confidential information observed:

20  
 21 The rationale of Bauguess does not apply here. Far from being unnecessary, the existence  
 22 of inherent power to terminate litigation for deliberate and egregious misconduct-conduct  
 23 which makes lesser sanctions inadequate to ensure a fair trial-is essential for the court to  
 24 preserve the integrity of its proceedings. Such power does not "imperil the independence of  
 25 the bar" and "undermine the adversary system." (Bauguess, supra, 22 Cal.3d at p. 638, 150  
 26 Cal.Rptr. 461, 586 P.2d 942.) Rather, it restores balance to the adversary system when the  
 27 misconduct of one party has destroyed it. And, as illustrated by the instant case, such power  
 28 can be exercised with full procedural due process: the trial court held a noticed evidentiary  
 hearing, and SSI makes no claim that the procedure violated its due process rights.  
 Bauguess is simply inapposite.

<sup>1</sup> The Defendant does not concede the accuracy of all the information provided to the Court by  
 the Plaintiff but he stresses the common provenance: disbarred attorney Block.

1 The recognition that California courts have inherent power to terminate litigation for  
 2 deliberate and egregious misconduct when no other remedy can restore fairness is consistent  
 3 with the overwhelming weight of authority from federal courts and courts of other states.  
 4 (See Meador, *supra*, 73 Texas Law Review at p. 1815 [terminating sanctions are “generally  
 5 acknowledged to be within a court's inherent power,” to be imposed only when lesser  
 6 sanctions are inadequate].) Although nuances of analysis exist among these decisions, the  
 7 general theory supporting them is straightforward: “Courts cannot lack the power to defend  
 8 their integrity against unscrupulous marauders; if that were so, it would place at risk the very  
 9 fundament of the judicial system.” (Aoude, *supra*, 892 F. 2d at p. 1119.)

10 In *Slesinger* a private detective, loosely supervised by litigation attorneys, scavenged  
 11 confidential Disney business and litigation documents from dumpsters during the interlude  
 12 before the garbage was hauled off. While this conduct was despicable, there was no argument  
 13 that the Plaintiff's *attorney* had countenanced it and, indeed, it was undisputed that counsel had  
 14 instructed the detective to stay within the law in his investigation.

15 The Court in *Slesinger* recognized that once information is improperly obtained it is all  
 16 but impossible to erase that information from the minds of a parties' litigation team:

17 In its statement of decision on Disney's motion for a terminating sanction,  
 18 the trial court concluded that it had no confidence that SSI would obey any  
 19 prophylactic order, and that it was not convinced SSI had either produced or  
 20 discarded all the illicitly-obtained documents it possessed. The court also  
 21 stated that SSI's principals knew information gleaned from stolen Disney  
 22 documents that could not be purged. In its statement of decision on SSI's  
 23 motion for new trial, in which it rejected SSI's proposal of Document Review  
 24 Counsel (see fn. 15, *ante*), the court reiterated the substance of these  
 25 findings: **“No power the Court possesses . can purge SSI's knowledge.  
 26 The full extent of SSI's knowledge remains uncertain as does the  
 27 potential impact of application of that knowledge to potential future  
 28 litigation decisions and events.** No power the Court possesses short of  
 termination can fully guard against the conscious or subconscious application  
 of SSI's knowledge in shaping the future course of the litigation and its  
 outcome.” On this reasoning, the court rejected SSI's proposal for  
 Document Review Counsel. (Emphasis added).

29 The Defendant believes that the bribery of a paralegal (himself a former attorney) for the  
 30 purpose of gaining a strategic advantage is uniquely detestable. It is uniquely so because it  
 31 involves a calculated corruption of the very office of attorney. The reason this case would afford

1 an appropriate fact pattern for a terminating sanction is that corruption of the office of attorney is  
2 a corruption of the adversary system and the proceedings of this Court itself. *How much more*  
3 *offensive is it to bribe an adversary to switch sides than to lurk near dumpsters?* The Defendant  
4 suggests it is orders of magnitude more invidious because it strikes at the integrity of this  
5 Honorable Court and these proceedings themselves.

6  
7 Because the information leading to the filing of the Plaintiff's Motion was obtained in a  
8 manner that would justify terminating sanctions, the Court should deny that Motion or Stay it  
9 pending an investigation of the issues raised by this Memorandum and the attached Exhibits.  
10

11  
12 4. Conclusion

13 The Defendant has attempted to maintain a dispassionate and measured tone that is  
14 calibrated to the dignity of these proceedings. To a degree it has been a struggle to maintain such  
15 a tone because the Defendant has been devastated and personally betrayed by the acts of  
16 corruption that underlay this case and this Motion. He reposed trust and confidence in Mr. Block  
17 and believed that Mr. Block had recovered from the substance abuse problems that had ruined  
18 his once promising career. The relationship between client and legal advisor is personal and  
19 emotions are invested in the common enterprise. The Defendant asks this Court to bear in mind  
20 the emotional harm that is inflicted on a client so callously betrayed as well as the harm inflicted  
21 on the dignity of this Court, these proceedings, and the legal profession by Zeff's legal, ethical,  
22 and criminal atrocities.

23 Under the Fair Debt Collection Practices Act, attorneys may be classified as "collectors".  
24 Perhaps Zeff thinks of himself primarily as a "collector". But he is also an attorney. He is subject  
25 to the Rules of Ethics and of Court. In discussions with a stranger (at first) about stealing client  
26  
27  
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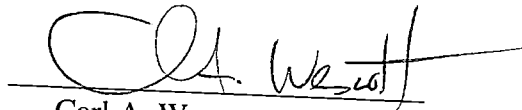
1 confidences, later identified as the legal adversary's paralegal, and a disbarred attorney, Mr. Zeff  
2 should have sought agreement with the Defendant or guidance from the Court. Instead, he  
3 misused the misappropriated information and presented his Motion to this Court while omitting  
4 any reference to a pending protest from the Defendant. The Plaintiff has not merely lacked  
5 candor, he has aggressively sought to deceive this Court in violation of California Rule of  
6 Professional Conduct 5-200, California Business and Professions Code 6068(d) and California  
7 Business and Professions Code 6016. Finally, Mr. Zeff has committed at least two crimes  
8 therein, first of all by way of stealing Child Support money and interfering with Child Support  
9 payments, and also with regard to California Business and Professions code 6128, which  
10 imposes misdemeanor criminal liability on any attorney who "engages in or consents to any  
11 deceit or collusion with intent to deceive the Court or any party." (BP 6128(a)). Mr. Zeff has  
12 deceived this Court and also lied to Defendant, who as a pro se is treated as an opposing  
13 attorney, many times. (Exhibit "E"). California law imposes punishment on such an attorney, of  
14 a fine of up to \$2500 or up to a 6-month jail sentence, or both, per count.  
15

16 This Court should exercise its power to deny the Plaintiff's Motion pending a detailed  
17 evidentiary review of the manner in which the materials on which the Plaintiff relies were in fact  
18 obtained. That issue now transcends any other issue in this case. The Defendant believes he can  
19 show that the Plaintiff has pursued this matter in bad faith since its inception and that the  
20 Plaintiff's tactics have only gotten more brazen and more degraded over time.  
21

22 The Plaintiff asks this Court to deny the Plaintiff's Motion and to focus on the issues of  
23 Disqualification and Sanctions including Terminating Sanctions (upcoming) for the deceptive  
24  
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1 and dishonest acts<sup>2</sup> of Plaintiff's counsel. Further, after reviewing the evidence, the Defendant  
2 asks this Court to refer this matter to the appropriate law enforcement agency for investigation,  
3 surely to be followed by prosecution by the appropriate District Attorney.  
4

5 Respectfully submitted,

6  
7   
8 Carl A. Wescott, *pro se*

9 November 4<sup>th</sup>, 2019  
10 San Francisco, CA  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

23 <sup>2</sup> The Defendant is put in mind of the words of Edmund Burke: "When was there so much  
24 iniquity ever laid to the charge of anyone? No, my lords, you must not look to punish any other  
25 such delinquent from India. Warren Hastings has not left substance enough in India to nourish  
26 such another delinquent". If attorney Zeff can bribe a member of the Defendant's litigation team,  
27 conceal the facts from this Court, and then misuse the ill-gotten data to persecute and harass the  
28 Defendant then what delinquency among litigators is left to be punished? Any future litigation  
abuse would be an anticlimax to this desecration.

**PROOF OF SERVICE**

I am over the age of 18 and not a party to this action.

I am a resident of or employed in the county where the mailing occurred; my business address is: 200 W. Jackson Blvd Chicago, IL 60606

On November 5<sup>th</sup>, 2019 I served the foregoing document(s) described as: **MOTION TO SET ASIDE DEFAULT JUDGMENT** to the following parties:

**Frederick Fiechter**  
**c/o David M. Zeff, esq.**  
**1100 Larkspur Landing Circle Suite 350**  
**Larkspur, CA 94939**

☒ [X] (By Fedex) I deposited such envelope in Fedex at San Francisco, California with postage thereon fully prepaid. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

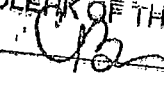
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: 11/05/2019

  
SIGNATURE OF PERSON

**FILED**  
San Francisco County Superior Court

NOV 26 2019

CLERK OF THE COURT  
BY:   
Deputy Clerk

1 Carl A. Wescott  
2 PO Box 191906  
3 San Francisco, CA 94119  
4 *in propria persona*  
5 +1 415 335 5000

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

8 FREDERICK C. FIECHTER

9 Plaintiff,

10 vs.

11 CARL A WESCOTT,

12 Defendant

Case No. CGC-10-496091

**DEFENDANT'S REQUEST THAT  
DEFENDANT'S MOTION TO SET  
ASIDE DEFAULT JUDGMENT BE  
GRANTED AS UNOPPOSED**

**Date: Tuesday, December 3<sup>rd</sup>, 2019  
Time: 9:30 am  
Dept: 302**

15 Petitioner and Movant Carl Wescott, appearing *pro se*, hereby asks this Court that his  
16 Motion to Set Aside Default Judgment should be granted as unopposed by the Respondent. In  
17 support of his Request, the Petition offers this concise Memorandum of Points and Authorities.

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19  
20 1. Introduction

21 The Courts of the State of California prefer resolving cases on the merits. *Rappleyea v.*  
22 *Campbell*, (1994) 8 Cal. 4<sup>th</sup> 978, 982. As the Supreme Court of California stated in an earlier  
23 case:

24 It is the policy of the law to favor, wherever possible, a hearing on the merits, and  
25 appellate courts are much more disposed to affirm an order where the result is to  
26 compel a trial upon the merits than they are when the judgment by default is allowed  
27 to stand and it appears that a substantial defense could be made. **Stated another** [63  
28 Cal. 2d 855] **way, the policy of the law is to have every litigated case tried upon  
its merits, and it looks with disfavor upon a party, who, regardless of the merits  
of the case, attempts to take advantage of the mistake, surprise, inadvertence, or  
neglect of his adversary.** (Freeman v. Goldberg, 55 Cal. 2d 622, 625 [12 Cal. Rptr.

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668, 361 P.2d 244]; Waybright v. Anderson, 200 Cal. 374, 377 [253 P. 148]; Berri v. Rogero, 168 Cal. 736, 740 [145 P. 95]; Crane v. Kampe, 225 Cal. App. 2d 200, 204-205 [37 Cal. Rptr. 220]; Stout v. Bakker, 212 Cal. App. 2d 78, 82-83 [27 Cal. Rptr. 661]; see Benjamin v. Dalmo Mfg. Co., 31 Cal. 2d 523, 525 [190 P.2d 593].) *Weitz v. Yankosky*, (1966) 63 Cal.2d 851, 854. (Emphasis added).

This is a case in which the Plaintiff has obtained a multi-million dollar judgment through surprise and sharp practice. The same Plaintiff has then utilized even more unscrupulous tactics in a putative attempt to enforce the judgement so obtained. This is a Plaintiff who will stop at nothing.

The Plaintiff has failed to respond to the Defendant's Motion to Set Aside, properly noticed and properly served. The Rules permit this Court to construe such a failure as acquiescence. On this record and with the pattern of incivility and duplicity set by the Plaintiff in this case, the Court should not hesitate to exercise its discretion to infer acquiescence to the Defendant's Motion.

## 2. The Plaintiff has Failed to Respond and the Court May Presume He has Waived his Opposition

CCP 1005(b) very clearly sets out the time frame applicable to California Motion Practice. The Respondent's Opposition, including his Memorandum of Points & Authorities ("MPA") was due nine Court days before the scheduled hearing on Tuesday December 3<sup>rd</sup>, 2019. No Opposition or MPA has been produced or served consistent with CCP 1005(b) nor has the Respondent filed a timely Motion for a Continuance or to Enlarge Time.

The Defendant in this case has offered a very serious challenge to the Judgment in question based on fraudulent service of process and electronic service to an obsolete email address in violation of California Rule of Court 2.251. The Defendant is not a member of the

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1 Bar and is thus at a disadvantage in facing a skilled and experienced attorney adversary.  
 2 Nevertheless, the Defendant has extended an effort to educate himself on the applicable law and  
 3 has cited case law and statutes in support of his Motion. The Defendant has also been open and  
 4 transparent with counsel for the Plaintiff, sending him courtesy copies and making sure he was  
 5 fully informed and in possession of all required paperwork in advance of statutory deadlines. The  
 6 Defendant attaches his Federal Express Receipt and his Proof of Service as Exhibits "A" and "B"  
 7 hereto respectively.

8  
 9 Despite the Defendant's good faith and diligent effort, the Plaintiff has – apparently  
 10 disrespectfully – left both the Defendant and the Court to guess at the Plaintiff's legal position.  
 11 California Rule of Court 8.54 (c) reads as follows:  
 12

13  
 14 **c) Failure to oppose motion**

15 A failure to oppose a motion may be deemed a consent to the granting of the  
 16 motion.

17  
 18 This rule was specifically applied by the Court in *Mbanugo v. California Regional Water Quality*  
 19 *Board* Court of Appeals, First District, 2011). It is a sensible and salutary rule and the inverse  
 20 mirror image of Rule of Court 3113 (failure to file an MPA in Support of Motion may be taken  
 21 as a concession that the Motion has no merit).  
 22

23  
 24 **3. The Plaintiff's Scorched Earth Tactics & Incivility Justify the Granting of this Motion**

25 The Defendant has conjunctively filed a Motion to Strike and a Motion to Disqualify,  
 26 based respectively on:

27 (a) Plaintiff Counsel's violation of California Rule of Court 9.4 *and his oath of office*

28 (amended in 2014 by the California Supreme Court to include a civility pledge) in

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1 failing to confer in good faith regarding scheduling, failing to respect the Defendant's  
2 Notice of Unavailability and failing to make reasonable efforts to accommodate the  
3 Defendant's schedule (as well as rudely questioning the Defendant's Notice of  
4 Unavailability);

5  
6 (b) Counsel's violation of Rules of Professional Conduct 1.12, 3.3, 4.1, 4.4 and 8.4  
7 arising out of the utilization and bribery of a witness who provided counsel with  
8 confidential information and perjurious testimony.

9  
10 The Defendant will not belabor these points factually as they have been amply supported  
11 in the record, by exhibit, and by affidavit in the referenced filings. But it is clear enough to the  
12 Defendant that he is opposing a skilled and experienced lawyer who has, at a minimum, engaged  
13 in sharp practice in relation to the service of process; the scheduling of hearings; the  
14 misappropriation of confidential and privileged information and, disclosures to the Court and to  
15 the Defendant concerning those acts of misappropriation and related acts of witness tampering  
16 and bribery.

17  
18 Under these cumulatively damning circumstances: the Plaintiff simply should not receive  
19 the benefit of the doubt.

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22 4. Conclusion

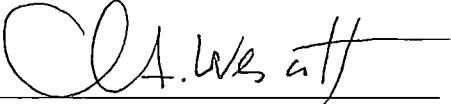
23 Because of the Plaintiff's failure to respond, the Defendant is under a disadvantage in  
24 preparing for what can only be surprise arguments at the hearing. This is a litigation trick that is  
25 unworthy of Plaintiff's experienced and skillful counsel. But, sadly, it is not the first trick that  
26 Plaintiff's counsel has pulled out of his bag. The Defendant asks the Court to view the pattern of  
27 bad faith established by this Plaintiff and to give the Defendant his day in Court and his chance  
28

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1 to resolve this case on the merits, consistent with the policy and preference of the California  
2 Supreme Court.

3 This Court should exercise its authority and discretion and grant the Defendant's Motion  
4 as unopposed by the Plaintiff.  
5

6  
7 RESPECTFULLY SUBMITTED

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9   
10

11 Carl A. Wescott

12 November 25<sup>th</sup>, 2019  
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**PROOF OF SERVICE**

I am over the age of 18 and not a party to this action.

I am a resident of or employed in the county where the mailing occurred; my business address is: 726 Market St SF, CA

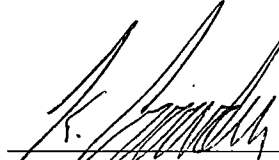
On November 26<sup>th</sup>, 2019 I served the foregoing document(s) described as: **DEFENDANT'S REPLY TO PLAINTIFF'S OPPOSITION AND IN FURTHER SUPPORT OF DEFENDANT'S MOTION TO DISQUALIFY LAW OFFICES OF DAVID M. ZEFF; and DEFENDANT'S REQUEST THAT DEFENDANT'S MOTION TO SET ASIDE DEFAULT JUDGMENT GRANTED AS UNOPPOSED; NOTICE OF INTENT TO APPEAR BY TELEPHONE** to the following parties:

**Frederick Fiechter  
c/o David M. Zeff, esq.  
1100 Larkspur Landing Circle Suite 350  
Larkspur, CA 94939**

☒ (By Fedex) I deposited such envelope in Fedex at San Francisco, California with postage thereon fully prepaid. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: 11/26/2019

  
\_\_\_\_\_  
SIGNATURE OF PERSON

# **Exhibit M**

Minute Order

From court register:

2019-12-03 LAW AND MOTION, DEPT. 302, DEC-03-2019 HEARING RE: DEFENDANT CARL WESCOTT'S MOTION TO SET ASIDE DEFAULT JUDGMENT IS OFF CALENDAR. DEFENDANTS DID NOT SERVE AND FILE THE MOTION AT LEAST 16 COURT DAYS BEFORE THE HEARING PLUS 5 DAYS FOR SERVICE BY MAIL, AS REQUIRED BY CODE CIV. PROC. 1005(B). JUDGE: RICHARD B. ULMER JR., CLERK: M. GOODMAN, COURT REPORTER: MARIA TORREANO, CSR#8600, MARIA.TORREANO@GMAIL.COM, REPORTED. (302/RBU)

# Exhibit N

January 16, 2019

EDWARD J. EMMONS, CLERK

U.S. BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA



CRAIG K. WELCH # 078546  
LAW OFFICE OF CRAIG K. WELCH  
809 Petaluma Boulevard North  
Petaluma, Ca. 94952  
Telephone (707) 782-1790  
Facsimile (707) 782-1795  
Email: cwelch@craigwelchlegal.com

Signed and Filed: January 16, 2019

A handwritten signature in black ink, appearing to read "Hannah L. Blumenstiel", is written over a horizontal line.

HANNAH L. BLUMENSTIEL  
U.S. Bankruptcy Judge

Attorneys for Plaintiff,  
Frederick C. Fiechter

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re

CARL ALEXANDER WESCOTT

Debtor.

Case No. 16-10975-HLB7  
Chapter 7

AP No. 18-01031-HLB

FREDERICK C. FIECHTER,

Plaintiff,

v.

CARL ALEXANDER WESCOTT, Debtor

Defendant.

**JUDGMENT BY DEFAULT**

Default was entered against defendant CARL ALEXANDER WESCOTT on October 30, 2018, and the Plaintiff filed a motion for judgment by default, and good cause appearing, judgment is entered against defendant CARL ALEXANDER WESCOTT in favor of Plaintiff, FREDERICK C. FIECHTER as follows:

IT IS ORDERED, ADJUDGED AND DECREED that the claims of Plaintiff, FREDERICK C. FIECHTER, against Defendant, CARL ALEXANDER WESCOTT, which



1 were, or could have been, scheduled or filed in case number 12-30143-DM-7 are not  
2 dischargeable and are excepted from discharge in this case and any other bankruptcy case that  
3 has been, or might be, filed by the Debtor, including the following:  
4

- 5 a. A Judgment in favor of Plaintiff and against the Defendant in the amount of  
6 \$1,352,254.00 entered in the California Superior Court for the County of San  
7 Francisco, case number GPF-11-511547, with additional interest accruing at the  
8 annual rate of 10% on principal of \$1,305,058 through January 17, 2012.  
9  
10 b. A judgment in favor of Plaintiff against the Defendant in the amount of  
11 \$1,490,032.31, plus daily interest after June 29, 2015 at the daily rate of \$156.14,  
12 arising from a promissory note dated May 7, 2008, which was entered in the  
13 Superior Court of California Court for the County of San Francisco in case  
14 number CGC-10-496091.  
15  
16 c. A \$55,000 profit share from a joint venture loan retained by the Debtor with a  
17 balance due of \$73,553.00, with additional interest accruing at the annual rate of  
18 10% on principal of \$55,000 from January 17, 2012.

19 \*\*\*END OF ORDER\*\*\*  
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